

1 Class Counsel, on behalf of the Settlement Class, are authorized to take all
2 appropriate action required or permitted to be taken by the Settlement Class pursuant
3 to the Agreement to effectuate its terms.

4 7. The Final Fairness Hearing will take place before the Honorable Dean
5 D. Pregerson on **October 27, 2014 at 11:00 a.m.**, at the United States District Court,
6 Central District of California, Courtroom #3, 312 Spring Street, Los Angeles,
7 California 90012, to determine: whether the proposed Settlement of the Lawsuit on
8 the terms and conditions provided for in the Agreement is fair, adequate and
9 reasonable as to the Settlement Class Members and should be approved; whether the
10 Judgment, as provided for in the Agreement, should be entered; and whether the
11 amount of fees and costs that should be awarded to Class Counsel, and the amount of
12 the service awards that should be awarded to Plaintiffs, as provided for in the
13 Agreement. The Court will also hear and consider any properly lodged objections at
14 that time.

15 8. This Court approves Gilardi & Co. LLC as the Settlement
16 Administrator. The Settlement Administrator is directed to implement the notice
17 program set forth in Sections 7.2 and 7.3 of the Agreement.

18 9. This civil action was commenced after February 18, 2005. To the extent
19 it has not already done so, the Court directs Chase to notify the appropriate Federal
20 and State officials under the Class Action Fairness Act of 2005, 28 U.S.C. § 1715,
21 and, at or before the Final Fairness Hearing, file proof that such notice has been
22 given.

23 10. This Court finds that notice as set forth in Sections 7.2 and 7.3 of the
24 Agreement are the only notice required, and that such notice satisfies the
25 requirements of due process, the Federal Rules of Civil Procedure, the Class Action
26 Fairness Act of 2005, 28 U.S.C. § 1715, and any other applicable laws, and
27 constitutes the best notice practicable under the circumstances and will constitute due
28 and sufficient notice to all persons entitled thereto. This Court approves the form

1 and content of the Postcard Notice and Long-form Notice attached as Exhibits C and
2 D to the Agreement.

3 11. All Settlement Class Members who do not request exclusion (“opt-out”)
4 from the Settlement Class certified pursuant to Federal Rule of Civil Procedure
5 23(b)(3), pursuant to the procedure set forth in Paragraph 12 below, will be bound by
6 all determinations and judgments in this Lawsuit concerning the Settlement,
7 including, but not limited to, the validity, binding nature and effectiveness of the
8 releases set forth in Sections 6.1 and 6.2 of the Agreement.

9 12. Any Settlement Class Member who wishes to opt-out of the Settlement
10 Class will submit to the Settlement Administrator an appropriate written request for
11 exclusion by mail, postmarked no later than one hundred and five (105) days after
12 entry of this Order. The request for exclusion must be personally signed by the
13 Settlement Class Member, and include: (i) the Settlement Class Member’s name,
14 address, telephone number; (ii) the last four digits of the Settlement Class Member’s
15 Chase credit card account number(s); (iii) a sentence certifying that he or she is a
16 Settlement Class Member; and (iv) the following statement: “I request to be excluded
17 from the class settlement in Davis v. Chase Bank USA, N.A., United States District
18 Court, Central District of California, Case No. 2:06-CV-04804-DDP-PJW.” No
19 Settlement Class Member, or any person acting on behalf of or in concert or
20 participation with a Settlement Class Member, may exclude any other Settlement
21 Class Member from the Settlement Class.

22 13. Any Settlement Class Member, who has not previously opted-out in
23 accordance with the terms of Paragraph 12 above, may appear at the Final Fairness
24 Hearing to argue that the proposed Settlement should not be approved and/or to
25 oppose the application of Class Counsel for an award of attorneys’ fees and costs and
26 the service awards to Plaintiffs; provided, however, that no Settlement Class Member
27 will be heard, and no objection may be considered, unless the Settlement Class
28 Member files with this Court a written statement of the objection postmarked no later

1 than one hundred and five (105) days following entry of this Order. Copies of all
2 objection papers also must be served electronically via the Court's ECF system or
3 mailed, postmarked no later than one hundred and five (105) days following entry of
4 this Preliminary Approval Order, to each of the following: Class Counsel, Drew
5 Pomerance, Esq., Roxborough, Pomerance, Nye & Adreani, LLP, 5820 Canoga
6 Avenue, Woodland Hills CA 91367-6549; and counsel for Chase, Julia B. Strickland,
7 Esq. and Stephen J. Newman, Esq., Stroock & Stroock & Lavan LLP, 2029 Century
8 Park East, 16th Floor, Los Angeles, California 90067. All objections must include:
9 (i) the objector's name, address and telephone number; (ii) the last four digits of the
10 objector's Circuit City Rewards Credit Card account number(s); (iii) a sentence
11 certifying he or she is a Settlement Class Member; (iv) the factual basis and legal
12 grounds for the objection to the Settlement; (v) the identity of witnesses whom the
13 objector may call to testify at the Final Fairness Hearing; (vi) copies of exhibits the
14 objector may seek to offer into evidence at the Final Fairness Hearing; (vii) a
15 sentence certifying that the objector has not been promised anything in return for
16 objecting; and (viii) the personal signature of the objector.

17 14. Class Counsel will submit their papers in support of final approval of
18 the Settlement and their application for attorneys' fees and reimbursement of
19 expenses by no later than twenty (20) days before the objection deadline set by
20 Paragraph 13 above.

21 15. Class Counsel will submit their papers in response to any objections by
22 no later than seven (7) days before the Final Fairness Hearing.

23 16. The costs of notice and settlement administration shall be paid as
24 described in Section 4 of the Agreement.

25 17. All proceedings in this Lawsuit are stayed pending final approval of the
26 Settlement, except as may be necessary to implement the Settlement or comply with
27 the terms of the Agreement.
28

1 18. Pending final determination of whether the Settlement should be
 2 approved, Plaintiffs, all Settlement Class Members and any person or entity allegedly
 3 acting on behalf of Settlement Class Members, either directly, representatively or in
 4 any other capacity, are preliminarily enjoined from commencing or prosecuting
 5 against the Released Parties any action or proceeding in any court or tribunal
 6 asserting any of the Released Claims, provided, however, that this injunction will not
 7 apply to individual claims of any Settlement Class Members who timely exclude
 8 themselves in a manner that complies with Paragraph 12 above. This injunction is
 9 necessary to protect and effectuate the Settlement, this Order, and this Court's
 10 flexibility and authority to effectuate this Settlement and to enter judgment when
 11 appropriate, and is ordered in aid of this Court's jurisdiction and to protect its
 12 judgments pursuant to 28 U.S.C. section 1651(a).

13 19. This Court reserves the right to adjourn or continue the date of the Final
 14 Fairness Hearing without further notice to Settlement Class Members, and retains
 15 jurisdiction to consider all further applications arising out of or connected with the
 16 Settlement. This Court may approve or modify the Settlement without further notice
 17 to Settlement Class Members.

18 IT IS SO ORDERED.

19 Dated: June 05, 2014



DEAN D. PREGERSON
United States District Judge

EXHIBIT D

Final Judgment

JS-6

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

GARY DAVIS, an individual; on
behalf of himself, and as PRIVATE
ATTORNEY GENERAL, and on
behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Honorable Dean D. Pregerson

JUDGMENT

Date: October 27, 2014

Time: 11:00 a.m.

Courtroom: 3

Judgment is hereby entered pursuant to the terms of the Final Approval
Order.

IT IS SO ORDERED.

Dated: October 29, 2014



DEAN D. PREGERSON
United States District Judge

EXHIBIT E

Amended Final Approval Order

NO JS-6

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

GARY DAVIS, an individual; on
behalf of himself, and as PRIVATE
ATTORNEY GENERAL, and on
behalf of all others similarly situated,

Plaintiff,

v.

CHASE BANK U.S.A., N.A., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV 06-04804 DDP (PJWx)

Honorable Dean D. Pregerson

**AMENDED FINAL APPROVAL
ORDER**

Date: October 27, 2014

Time: 11:00 a.m.

Courtroom: 3

1 Plaintiff Gene Castillo ("Plaintiff"), on his own behalf and on behalf of all
2 others similarly situated, submitted to the District Court a Motion for Final
3 Approval of Settlement ("Motion") seeking final approval of the Stipulation and
4 Agreement of Settlement (the "Agreement" or the "Settlement"), and the exhibits
5 attached thereto, entered into by and between Plaintiff and Defendant Chase Bank
6 U.S.A., N.A. ("Chase"). Chase does not oppose Plaintiff's Motion.

7 By Order dated June 5, 2014, the District Court entered an Order that
8 preliminarily approved the Agreement and conditionally certified the Settlement
9 Class for settlement purposes only (the "Preliminary Approval Order"). Due and
10 adequate notice having been given to the Settlement Class in compliance with the
11 procedures set forth in the Agreement and the Preliminary Approval Order, this
12 Court having considered all papers filed and proceedings had herein, and
13 otherwise being fully informed of the premises and good cause appearing
14 therefore, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

15 1. This Final Approval Order incorporates by reference the definitions
16 in the Agreement, and all terms used herein will have the same meanings as set
17 forth in the Agreement.

18 2. This Court has jurisdiction over the subject matter of the above-
19 captioned action (the "Lawsuit") and, for purposes of this Settlement only,
20 personal jurisdiction over the Parties and all Settlement Class Members.

21 3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and
22 consistent with due process, this Court hereby approves the Agreement and finds
23 that the settlement consideration is fair and that said Settlement is, in all respects,
24 fair, reasonable and adequate to the Settlement Class Members, and the Parties are
25 hereby directed to consummate the Settlement in accordance with the terms and
26 provisions of the Agreement.

27 4. Pursuant to Federal Rule of Civil Procedure 23(b)(3), this Court
28 hereby certifies the Settlement Class solely for purposes of effectuating this

1 Settlement.

2 a. The Settlement Class is defined as follows:

3 All Chase Circuit City Rewards Credit Cardmembers with
4 California billing addresses who, between May 26, 2004 and
5 June 5, 2014 (inclusive), made a promotional or deferred-
6 interest purchase at Circuit City and who, as a result of
7 payments or credits being allocated to a regular purchase
8 balance after the promotional or deferred-interest balance, paid
9 more in finance charges than they would have paid if the
10 payments or credits had first been applied to the regular
11 purchase balance.

12 b. Settlement Class Members had the right to exclude themselves
13 by way of the opt-out procedure set forth in the Preliminary Approval Order.
14 Excluded from the Settlement Class are 22 persons who validly and timely
15 requested exclusion from the Settlement Class by way of the opt-out procedure,
16 and 2 persons who submitted an untimely request for exclusion, but for whom
17 Chase is waiving its objection. These 24 individuals are identified in Exhibit 1
18 hereto (the "Opt-Outs").

19 5. For purposes of this Settlement only, this Court finds and concludes
20 that: (a) the Settlement Class Members are so numerous that joinder of all
21 Settlement Class Members is impracticable; (b) there are questions of law and fact
22 common to the Settlement Class which predominate over any individual
23 questions; (c) Plaintiff's claims are typical of the claims of the Settlement Class;
24 (d) Plaintiff and Class Counsel have fairly and adequately represented and
25 protected the interests of all of the Settlement Class Members; and (e) a class
26 action is superior to other available methods for the fair and efficient adjudication
27 of the controversy, considering: (i) the interests of the Settlement Class Members
28 in individually controlling the prosecution of separate actions; (ii) the desirability

1 or undesirability of continuing the litigation of these claims in this particular
2 forum; and (iii) the difficulties likely to be encountered in the management of this
3 class action.

4 6. This Court finds that the notice provided to Settlement Class
5 Members was the best notice practicable and fully satisfied the requirements of
6 due process, the Federal Rules of Civil Procedure, the Class Action Fairness Act
7 of 2005, 28 U.S.C. § 1715, and any other applicable laws, and constituted the best
8 notice practicable under the circumstances and constituted due and sufficient
9 notice to all persons entitled thereto. Class Counsel has filed with the Court proof
10 that notice was provided to Settlement Class Members in compliance with the
11 procedures set forth in the Agreement and the Preliminary Approval Order.
12 Chase's counsel has filed with the Court proof of compliance with the Class
13 Action Fairness Act of 2005.

14 7. There were no objections to the Settlement.

15 8. This Court hereby dismisses with prejudice on the merits and without
16 costs (except as otherwise provided in the Agreement) the above-captioned action
17 (subject to retention of jurisdiction to enforce the Settlement).

18 9. By operation of this Final Approval Order and upon the occurrence
19 of the Effective Date, Plaintiff and each Settlement Class Member, their
20 respective heirs, executors, administrators, representatives, agents, attorneys,
21 partners, successors, predecessors-in-interest, assigns and all persons acting for or
22 on their behalf, are deemed to have fully, finally and forever released the Released
23 Parties (as defined below) from all Claims (as defined below).

24 a. "Released Parties" means Chase, together with its
25 predecessors, successors (including, without limitation, acquirers of all or
26 substantially all of its assets, stock or other ownership interests) and assigns; the
27 past, present, and future, direct and indirect, parents (including but not limited to
28 holding companies and JPMorgan Chase & Co.), subsidiaries and affiliates of any

1 of the above; and the past, present and future principals, trustees, partners, claims
2 administrators (including, without limitation, the Settlement Administrator),
3 officers, directors, employees, agents, attorneys, shareholders, advisors,
4 predecessors, successors, assigns, representatives, heirs, executors, and
5 administrators of any of the above.

6 b. “Claim” and “Claims” mean any and all actual or potential
7 claims, actions, causes of action, suits, counterclaims, cross-claims, third party
8 claims, contentions, allegations, and assertions of wrongdoing, and any demands
9 for any and all debts, obligations, liabilities, damages (whether actual,
10 compensatory, treble, punitive, exemplary, statutory or otherwise), attorneys’ fees,
11 costs, expenses, restitution, disgorgement, injunctive relief, any other type of
12 equitable, legal or statutory relief, any other benefits, or any penalties of any type
13 whatsoever, whether known or unknown, suspected or unsuspected, contingent or
14 non-contingent, or discovered or undiscovered, whether asserted in federal court,
15 state court, arbitration or otherwise, and whether triable before a judge or jury or
16 otherwise, including, without limitation, those that were alleged, or that could
17 have been alleged based on the same or similar facts and circumstances, in the
18 Lawsuit.

19 c. Without limiting the foregoing, the claims released pursuant to
20 Paragraph 9b (the “Released Claims”) specifically extend to Claims that
21 Settlement Class Members do not know or suspect to exist in their favor as of or
22 prior to the Effective Date.

23 10. The Parties, and all Settlement Class Members, agree that the
24 releases in Paragraph 9 constitute a waiver of Section 1542 of the California Civil
25 Code and any similar or comparable provisions, rights and benefits conferred by
26 the law of any state or territory of the United States or any jurisdiction, and any
27 principle of common law. Section 1542 of the California Civil Code provides:
28

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
2 WHICH THE CREDITOR DOES NOT KNOW OR
3 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE
4 TIME OF EXECUTING THE RELEASE, WHICH IF
5 KNOWN BY HIM OR HER MUST HAVE MATERIALLY
6 AFFECTED HIS OR HER SETTLEMENT WITH THE
7 DEBTOR.

8 Plaintiff and each Settlement Class Member understand and acknowledge
9 the significance of these waivers of California Civil Code Section 1542 and/or of
10 any other applicable law relating to limitations on releases. In connection with
11 such waivers and relinquishment, Plaintiff and each Settlement Class Member
12 acknowledge that they are aware that they may hereafter discover facts in addition
13 to, or different from, those facts which they now know or believe to be true with
14 respect to the subject matter of the Settlement, but that they release fully, finally
15 and forever all Claims, and in furtherance of such intention, the releases will
16 remain in effect notwithstanding the discovery or existence of any such additional
17 or different facts. The Parties acknowledge (and all Settlement Class Members by
18 operation of law are deemed to have acknowledged) that the release of unknown
19 Claims as set forth herein was separately bargained for and was a key element of
20 the Settlement.

21 11. This Final Approval Order, the Preliminary Approval Order, the
22 Agreement, and any act performed or document executed pursuant to or in
23 furtherance thereof:

24 a. Will not be offered or received against the Released Parties as
25 evidence of, or be construed as or deemed to be evidence of, any admission or
26 concession by the Released Parties as to the truth or relevance of any fact alleged
27 by Plaintiff, the existence of any class alleged by Plaintiff, the propriety of class
28

1 certification had the Lawsuit been litigated rather than settled, or the validity of
2 any claim that has been or could have been asserted in the Amended Complaint or
3 in any other litigation, or the deficiency of any defense that has been or could have
4 been asserted to the Amended Complaint or in any other litigation, or of any
5 liability, negligence, fault, or wrongdoing of the Released Parties;

6 b. Will not be offered as or received against any of the Released
7 Parties as evidence of, or construed as or deemed to be evidence of, any admission
8 or concession of any liability, negligence, fault or wrongdoing, or in any way
9 referred to for any other reason as against any of the parties to the Agreement, in
10 any other civil, criminal or administrative action or proceeding, other than such
11 proceedings as may be necessary to effectuate the provisions of the Agreement,
12 except that the Released Parties may refer to it to effectuate the liability protection
13 granted them thereunder;

14 c. Will not be deemed an admission by Chase that it is subject to
15 the jurisdiction of any court;

16 d. Will not be construed against Chase as an admission or
17 concession that the consideration to be given under the Agreement represents the
18 amount which could be or would have been recovered after trial.

19 12. The Released Parties may file the Agreement and/or this Final
20 Approval Order in any action that may be brought against them in order to support
21 a defense or counterclaim based on principles of res judicata, collateral estoppel,
22 release, good faith settlement, judgment bar, reduction, set-off or any other theory
23 of claim preclusion or issue preclusion or similar defense or counterclaim.

24 13. Settlement Class Members, and any person or entity allegedly acting
25 on behalf of Settlement Class Members, either directly, representatively or in any
26 other capacity, are enjoined from commencing or prosecuting against the Released
27 Parties any action or proceeding in any court or tribunal asserting any of the
28 Released Claims, provided, however, that this injunction will not apply to non-

1 released claims of Opt-Outs.

2 14. The Court finds that the Parties and their counsel have complied with
3 each requirement of Rule 11 of the Federal Rules of Civil Procedure as to all
4 proceedings herein.

5 15. Class Counsel are hereby awarded the sum of \$1,500,000 in
6 attorneys' fees and costs, which sum the Court finds to be fair and reasonable,
7 which will be paid to Class Counsel from the Settlement Fund. The award of
8 attorneys' fees and costs will be allocated among Class Counsel in a fashion
9 which, in the opinion of Class Counsel, fairly compensates Class Counsel for their
10 respective contributions in the prosecution of the Lawsuit.

11 16. Plaintiff Gene Castillo and Gary Davis are hereby awarded \$5,000
12 each from the Settlement Fund. These service awards are for their time and
13 efforts spent conferring with and assisting Class Counsel to help further the
14 Lawsuit for the benefit of the Settlement Class.

15 17. In making the award of attorneys' fees and costs to Class Counsel
16 and service awards to Plaintiff Gene Castillo and Gary Davis, the Court has
17 considered and found that:

18 a. The Parties entered into arm's-length discussions regarding
19 attorneys' fees for Class Counsel, including extensive discussions through and
20 with the assistance of a third-party mediator, Hon. Edward A. Infante (Ret.);

21 b. The Settlement created a benefit with a substantial value to the
22 Settlement Class and numerous Settlement Class Members.

23 c. 438,969 copies of the Postcard Notice were disseminated to
24 putative Settlement Class Members. No objections were filed against the terms of
25 the proposed Settlement;

26 d. Class Counsel conducted the Lawsuit and achieved the
27 Settlement with skill, perseverance and diligent advocacy;

28 e. The Lawsuit involves complex factual and legal issues and was

1 actively prosecuted over seven years and, in the absence of a settlement, would
2 involve further lengthy proceedings with uncertain resolution of the complex
3 factual and legal issues;

4 f. Had Class Counsel not achieved the Settlement there would
5 remain a significant risk that the Settlement Class may have recovered less or
6 nothing from the defendant;

7 g. The separate declarations submitted by each of the three firms
8 prosecuting this case on behalf of the Class state that, to achieve the Settlement,
9 Roxborough, Pomerance, Nye & Adreani, LLP devoted over 3,152 hours, with a
10 lodestar value of over \$1,440,200.00, Westerman Law Corp. devoted over 33
11 hours, with a lodestar value of over \$26,000, and Milberg LLP devoted over 2,741
12 hours with a lodestar value of over \$1,435,076.00.

13 h. The amount of attorneys' fees and costs awarded and the
14 amount of the service awards are fair and reasonable and consistent with awards
15 in similar cases.

16 18. Without affecting the finality of this Final Approval Order in any
17 way, this Court retains continuing jurisdiction of all matters relating to the
18 modification, interpretation, administration, implementation, effectuation and
19 enforcement of the Settlement. Class Counsel are to continue in their role to
20 oversee all aspects of the Settlement. Upon notice to Class Counsel, Chase may
21 seek from this Court, pursuant to 28 U.S.C. § 1651(a), such further orders or
22 process as may be necessary to prevent or forestall the assertion of any of the
23 Released Claims in any other forum, or as may be necessary to protect and
24 effectuate the Settlement and this Final Approval Order.

25 19. If an appeal, writ proceeding or other challenge is filed as to this
26 Final Approval Order, and if thereafter the Final Approval Order is not ultimately
27 upheld, all orders entered, stipulations made and releases delivered in connection
28

1 herewith, or in the Agreement or in connection therewith, will be null and void to
2 the extent provided by and in accordance with the Agreement.

3 20. There is no just reason for delay in the entry of this Final Approval
4 Order and immediate entry by the Clerk of the Court is expressly directed
5 pursuant to Rule 54(b) of the Federal Rules of Civil Procedure.

6
7 IT IS SO ORDERED.

8
9 Dated: October 29, 2014



DEAN D. PREGERSON
United States District Judge

EXHIBIT 1

OPT-OUT LIST

1. Vicky Williams
2. Juanito D. Doce
3. Richard T. Rodarte
4. Clarice Mirzakhanian
5. Genee B. Aleksandrovi
6. Amy L. Norris
7. Pedro Gomez
8. Veronica E. Siy
9. Gordon Tam
10. Thomas Condos, Jr.
11. Robin B. Hansen
12. Sandra Pimentel
13. Thirin Has
14. Lida Salas
15. Edward Sanches
16. Scott A. Bidnick
17. Charla Pinney
18. Charles J. Yi
19. Wayne E. White
20. Geraldine D. Denser
21. Elaine Hanley
22. Joseph Meza
23. Noe Flores
24. Anthony Lewis

CERTIFICATE OF SERVICE

I hereby certify that, on October 23, 2014, a true and correct copy of the foregoing AMENDED [PROPOSED] FINAL APPROVAL ORDER was filed electronically and served by U.S. Mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system or by facsimile to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the court's CM/ECF System.

s/ Elia Ramirez
Elia Ramirez

EXHIBIT F

Service and Expense Remittance Summary

STROOCK

SERVICE AND EXPENSE REMITTANCE SUMMARY

DATE	November 7, 2014
CLIENT	JPMorgan Chase Bank
	560 Mission Street
	3rd Floor
	Mail Code: CA1-0301
	San Francisco, CA 94105-2907
RE	720524 JPMorgan Chase Bank
	0940 Davis, Gary J.

PREVIOUS PAYMENTS RECEIVED FOR FEES BILLED THROUGH SEPTEMBER 31, 2014	\$1,610,450.37
PREVIOUS PAYMENTS RECEIVED FOR EXPENSES BILLED THROUGH SEPTEMBER 31, 2014	\$36,627.46
UNBILLED FEES OCTOBER 1 - 31, 2014	\$5,093.00
UNBILLED EXPENSES OCTOBER 1 - 31, 2014	\$61.46

TOTAL	\$1,652,232.29
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WIRE TRANSFER INSTRUCTIONS	
BANK NAME	JPMorgan Chase Bank
BANK ADDRESS	500 Stanton Christiana Road, Newark, DE 19713
ACCOUNT NAME	Stroock & Stroock & Lavan LLP
ACCOUNT NUMBER	006 028356
ABA/ROUTING NUMBER	021000021
INTERNATIONAL SWIFT CODE	CHASUS33
DESCRIPTION/REFERENCE	Client/Matter: 720524.0940

Any disbursement balances shown are compiled from original sources as entered on our records to the billing date shown. Any disbursements/charges invoiced to us or posted by us subsequent to that date will be reflected in future billing.

EXHIBIT C

1 Drew E. Pomerance, Esq. (SBN 101239)
Michael L. Phillips, Esq. (SBN 232978)
2 **ROXBOROUGH, POMERANCE & NYE LLP**
5820 Canoga Avenue, Suite 250
3 Woodland Hills, California 91367
Telephone: (818) 992-9999
4 Facsimile: (818) 992-9991

5 Jeff Westerman, Esq. (SBN. 94559)
Sabrina Kim, Esq. (SBN. 186242)
6 **MILBERG LLP**
One California Plaza
7 300 South Grand Avenue, Suite 3900
Los Angeles, California 90071
8 Telephone: (213) 617-1200
Facsimile: (213) 617-1975
9

10 Attorneys for Plaintiff GARY DAVIS,
individually and on behalf of himself,
as Private Attorney General and
11 on behalf of all others similarly situated

12 Stephen J. Newman, Esq. (SBN 181570)
STROOCK & STROOCK & LAVAN, LLP
13 2029 Century Park East, Suite 1800
Los Angeles, California 90067-3086
14

15 Attorneys for Defendant
CHASE BANK U.S.A., N.A.
16

17 **UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 GARY DAVIS, an individual; on behalf
20 of himself, and as PRIVATE
ATTORNEY GENERAL, and on behalf
21 of all others similarly situated,

22 Plaintiff,

23 vs.
24

25 CHASE BANK U.S.A., N.A., a
Delaware corporation; CIRCUIT CITY
26 STORES, INC., a Virginia corporation,
and DOES 1 through 50, inclusive,
27

28 Defendants.

Case No. CV 06 4804 DDP (PJWx)

**JOINT STATUS REPORT AND
REQUEST FOR STATUS
CONFERENCE**

(Hon. Dean D. Pregerson – Courtroom 3)

1 Plaintiff, Gary Davis, on behalf of himself and all others similarly situated,
2 and Defendant Chase Bank U.S.A., N.A., submit this Joint Status Report and
3 request that the Court set a Status Conference at the earliest opportunity to discuss
4 the current status of this case, including whether the stay should be lifted, and if so,
5 the setting of various dates pertaining to discovery, pretrial, and trial. Two recent
6 developments warrant a status conference:

7 (1) The Ninth Circuit rendered a final decision on appeal, affirming this
8 Court's Order denying Chase's Motion to Compel Arbitration; and

9 (2) The recent bankruptcy filing by co-defendant Circuit City.

10 I. Plaintiff's Position With Respect to the Current Stay

11 Plaintiff requests that the stay be lifted immediately so as to further prosecute
12 this class action. The sole purpose for the stay was to enable Chase to appeal this
13 Court's order denying its Motion to Compel Arbitration. "The court finds that it
14 would be more cost-effective and efficient to wait until the Ninth Circuit rules on
15 the Arbitration Order before permitting litigation to continue." (Court's Order
16 granting stay, 6-1-07, p. 4) The appellate process has now come to an end, with the
17 Ninth Circuit's decision affirming this Court's Order, having become final. There
18 is no further reason to stay this case.

19 Circuit City recently filed for bankruptcy protection, and Plaintiff recognizes
20 that the automatic stay would preclude any further prosecution against Circuit City.
21 Yet, there is no reason that the case should likewise be stayed as to Chase. The
22 conduct of Chase and Circuit City that is at issue in this case is separate and distinct,
23 and there is no reason why Plaintiff cannot proceed just against Chase. This case
24 was filed June 26, 2006 – 2 ½ years ago – and it is now time that Plaintiff be
25 allowed to prosecute his claims.

26 Defendants argue that the automatic stay is extended to a co-defendant when
27 unusual circumstances arise and a judgment against the non-debtor would in effect
28 be a judgment or finding against the debtor. *A.H. Robbins Company, Inc. vs.*

1 *Piccinin* 788 F.2d 994 (4th Cir. 1986), and that this principle is especially true when
2 the non-debtor co-defendants' obligations are dependent on those of the debtor.
3 *O'Malley Lumber v. Lockard* 884 F.2d 1171 (9th Cir. 1989). In this case, however,
4 there are no unusual circumstances and a judgment against Chase would not be
5 tantamount to a judgment or finding against Circuit City. Chase's liabilities and
6 obligations are not dependent on those of Circuit City. Chase's wrongdoing extends
7 to its own disclosures set forth in the cardmember agreement, the adequacy or
8 inadequacy of those disclosures, and the improper allocation of credit card
9 payments to promotional items before crediting them first to higher interest non-
10 promotional items. None of this conduct has anything to do with the conduct
11 alleged against Circuit City.

12 In that respect, Circuit City is not an "indispensable party" pursuant to FRCP
13 19. Given the nature of this case, and the acts of wrongdoing as alleged against
14 Chase, a final decree can certainly be rendered against Chase without affecting
15 Circuit City's interests.

16 Finally, Chase makes the unsupported argument that any discovery directed
17 to Circuit City would somehow burden Circuit City and impair the administration of
18 its Chapter 11 bankruptcy case. But Chase does not indicate how responding to
19 discovery in the normal course would work an undue burden on Circuit City or
20 otherwise somehow interfere with its current plans to liquidate.

21 Staying this case in its entirety until all of the bankruptcy issues are resolved
22 against Circuit City is simply not in the interests of justice and would work an
23 undue prejudice upon the thousands of class members who are waiting for their day
24 in court against Chase.

25 II. Defendant's Position With Respect to the Current Stay

26 With Circuit City recently filing for Chapter 11 bankruptcy, as a matter of
27 law, this action is stayed pursuant to Section 362 of the Bankruptcy Code. When a
28 defendant files bankruptcy, the litigation proceedings automatically are stayed as to

1 that particular defendant. See 11 U.S.C.A. Section 362(a)(1). Moreover, the stay
2 also applies to co-defendants in circumstances like those present here. If Plaintiff
3 wishes to avoid the automatic stay, he must amend his complaint to avoid conflict
4 with Circuit City's pending bankruptcy proceedings.

5 On November 12, 2008, Circuit City filed Notices of Filing of Bankruptcy
6 with the Ninth Circuit and this Court in what has become a massive, highly
7 publicized bankruptcy reflective of the current economy. Indeed, on its Schedule F
8 filed in the bankruptcy proceedings, Circuit City has listed Chase as a creditor
9 holding an unsecured nonpriority claim based upon Circuit City's indemnity
10 obligations to Chase resulting from this specific litigation. (See In re Circuit City
11 Stores, Inc., No. 08-35653 (E.D. Va.), Docket No. 1130).

12 Plaintiff's current complaint centers on Circuit City and its advertising to its
13 customers. Without Circuit City, Plaintiff's claims cannot proceed in this
14 litigation. As an initial matter, Plaintiff's class definition as currently framed
15 reaches back to 2002 when Circuit City and First North American National Bank,
16 not Chase, owned the credit card portfolio at issue. (See Declaration of William J.
17 Mahoney In Support of Motion To Compel Arbitration, Exhibit C, Docket No. 25.)
18 Moreover, the specific advertisements Plaintiff challenges were produced by
19 Circuit City and not by Chase. (Complaint, Exhibit A.) Notably, both Plaintiff and
20 the Court have stated that Circuit City's advertising is at the core of this litigation –
21 the issue being whether the advertisement was misleading and deceptive. As stated
22 by the Court:

23 MR. NEWMAN: And given the nature – here, this is –
24 what the dispute is about is, well I timed my credit to my
25 payments so that I would zero my balance before I
26 bought this next thing. And as a result there was the
27 SNAFU where the credits hit too late so as a result they
28 were applied all to the low interest rate balances as
opposed to the high interest rate balance. This kind of
dispute, which is the kind of dispute that actually is well-
suited for arbitration.

1 THE COURT: That isn't what happened here. The
2 argument is that there was a misrepresentation about the
3 nature of the zero-interest program. That's a completely
4 different situation than the one you just postulated. The
one you just postulated is a sort of a garden variety
contract interpretation dispute about when something
vests or something hits. I understand that. I just don't
see it as the case here.

5 MR. NEWMAN: That seems to be the factual claim
6 here. There is certainly an argument in the complaint
7 that. . . and by the way, the bank's policy in applying
8 payments to low balances before high balances, that's a
real problem. That's the sort of – that's the big sort of
policy question.
And I would suggest that –

9 THE COURT: Well, it's a question of whether that was
10 disclosed to the consumer. If it was disclosed
11 appropriately, I don't see any problem with it.

12 (Transcript of December 6, 2006 Hearing on Motion to Compel Arbitration, p. 12,
13 3-5, 17-19, Docket No. 38.) Plaintiff's complaint also targets the advertisement as
14 the alleged misrepresentation at issue: "Another benefit of the Circuit City
15 Rewards Card was access to Defendants' advertised promotion of 'no interest, no
16 payment' for a specified period of time on certain types of Circuit City purchases."
17 (Complaint, ¶ 6.)

18 Automatic stays are extended to co-defendants when "unusual
19 circumstances" arise and a judgment against the non-debtor would in effect be a
20 judgment or finding against the debtor. A.H. Robins Co., Inc. v. Piccinin, 788 F.2d
21 994, 999 (4th Cir. 1986). This is particularly true when the non-debtor co-
22 defendant's obligations are dependent on those of the debtor. See, e.g., O'Malley
23 Lumber Co. v. Lockard (In re Lockhard), 884 F.2d 1171, 1179 (9th Cir. 1989);
24 Circle K. Corp. v. Marks (In Re Circle K), 121 B.R. 257, 261 (Bankr. D. Ariz.
25 1990) (staying litigation against officers of the debtor); Maxicare Health Plans, Inc.
26 v. Centinela Mammoth Hospital (In re Family Health Servs.), 105 B.R. 937, 942
27 (Bankr. C.D. Cal. 1989) (staying litigation against nondebtor members of debtor
28 health maintenance organizations).

1 In addition, a debtor's bankruptcy stay extends to non-debtor co-defendants
2 when the debtor is an "indispensable party" in accordance with Federal Rule of
3 Civil Procedure 19. The United States Supreme Court has defined Rule 19
4 "indispensable" parties as "[p]ersons who not only have an interest in the
5 controversy, but an interest of such a nature that a final decree cannot be made
6 without either affecting the interest, or leaving the controversy in such a condition
7 that its final termination may be wholly inconsistent with equity and good
8 conscience." Shields v. Barrow, 58 U.S. (17 How.) 130, 139, 15 L.Ed. 158 (1955).

9 Based on the above, Chase's indemnity claim against Circuit City presents
10 the requisite "unusual circumstances" to stay the case as to Chase. Increased
11 liability on Chase causes an increase in the scheduled indemnity claim and
12 therefore impairs the rights of Circuit City and other creditors and administrators of
13 the estate. Moreover, Circuit City is an indispensable party to this litigation
14 because the putative class as currently proposed reaches back to 2002, before
15 Chase had even acquired the card portfolio at issue, and because Circuit City, not
16 Chase, created and distributed the advertisement at issue.

17 In this Joint Report, Plaintiff identifies at least five areas for which
18 information needs to be discovered. Specifically, Plaintiff requests information
19 about "the promotion program's marketing and implementation." Indeed, this
20 information is necessary and belongs only to Circuit City. However, for either
21 Plaintiff or Chase to seek this information would burden Circuit City and impair
22 the administration of its Chapter 11 bankruptcy case. This means that Chase and
23 Plaintiff cannot proceed with their claims against Circuit City. For these reasons,
24 this litigation should remain stayed in its entirety until the claims are substantially
25 re-shaped.

26 //

27 //

28 //

1 III. The Parties' Position with Respect to Discovery

2 A. Plaintiff's Statement

3 Assuming the stay is lifted, Plaintiffs seek to do discovery permitted under
4 the federal rules to prosecute the case to conclusion. Such discovery, at a minimum,
5 would include information about:

- 6 (1) Identifying Chase cardmembers who made promotional purchases and
7 were assessed finance charges;
8 (2) Chase's methods for identifying those cardmembers in number 1
9 above; and
10 (3) The promotional program's marketing and implementation.
11 (4) The manner in which Chase discloses to cardmembers how payments
12 are allocated between promotional and non-promotional items.
13 (5) The methods and means for assessing the finance charges that would
14 comprise the damages to the class.

15 B. Defendant's Statement With Respect To Discovery

16 Discovery is premature at this point because Plaintiff needs to amend his
17 complaint to avoid the bankruptcy stay and because Chase intends to file a motion
18 for judgment on the pleadings on federal preemption grounds. Under the Final
19 Rule on Unfair Credit Card Acts or Practices recently set forth by the Federal
20 Reserve Board and other financial regulators, the exact payment allocations at issue
21 in this case have been deemed fair and lawful until the middle of 2010:

22 Because broad regulations, such as those in the final rule,
23 can require large numbers of institutions to make major
24 adjustments to their practices, there could be more harm
25 to consumers than benefit if the regulations were
26 effective earlier than the effective date. If institutions
27 were not provided a reasonable time to make changes on
28 their operations and systems to comply with the final
rule, they would either incur excessively large expenses,
which would be passed on to consumers, or cease
engaging in the regulated activity altogether, to the
detriment of consumers. And because the Agencies find
an act or practice unfair only when the harm outweighs
the benefits to consumers or to competition, the

1 implementation period preceding the effective date set
2 forth in the final rule is integral to the Agencies' decision
3 to restrict or prohibit certain acts or practices by
4 regulation.

5

6 The Agencies recognize that, as discussed above with
7 respect to specific prohibitions, the final rule prohibits
8 some long-standing practices that have been expressly or
9 implicitly permitted under state or federal law or the
10 guidance of the federal banking agencies. . . . Indeed,
11 prior to the effective date, institutions may change
12 interest rates on existing balances and take other actions
13 that will be prohibited once the final rule is effective. . . .
14 institutions are not required to comply with the final rule
15 before the effective date [July 2010].

16 Final Rule on Unfair Credit Card Acts or Practices, pgs. 192-95. In light of this
17 Final Rule, Plaintiff's claims as currently framed would fail as a matter of law.

18 IV. Proposed Relevant Dates

19 Plaintiff requests that the court lift the stay now, so that the discovery
20 referenced above can immediately commence.

21 With respect to the various discovery cut-off, class certification, Pre-Trial and
22 Trial dates, Plaintiff believes those can be set at a Rule 26(f) Scheduling
23 Conference, so Plaintiff further requests that the Court set a Rule 26 (f) Scheduling
24 Conference within the next 45 days or as soon thereafter as the Court's schedule
25 permits.

26 V. Defendant's Position With Respect To Proposed Relevant Dates

27 Chase proposes that Plaintiff file an amended complaint by February 28,
28 2009. Chase should file its motion for judgment on the pleadings or a motion to
dismiss by March 31, 2009, with hearing noticed for May 2009. A further case
management conference should be set for early June 2009.

VI. Conclusion

The parties would like to discuss these various issues with the Court at its
earliest convenience, and request that the Court set a Status Conference at the first

1 available date and time.

2 Dated: January 22, 2009

ROXBOROUGH, POMERANCE & NYE, LLP

3
4 By: 

DREW E. POMERANCE

MICHAEL L. PHILLIPS

Attorneys for Plaintiff

6 GARY DAVIS, individually and on behalf of
7 himself, as Private Attorney General and on
behalf of all others similarly situated

8 Dated: January 26, 2009

MILBERG LLP

9
10
11 By: 

JEFF WESTERMAN

Attorneys for Plaintiff

12 GARY DAVIS, individually and on behalf of
13 himself, as Private Attorney General and on
behalf of all others similarly situated

14
15 Dated: January 26, 2009

STROOCK & STROOCK & LAVAN, LLP

16
17
18 By: 

STEPHEN J. NEWMAN

Attorneys for Defendant

19 CHASE BANK U.S.A., N.A.
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28

EXHIBIT D

FILED

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17 individually and on behalf of himself, and
18 as Private Attorney General and on behalf of
19 all others similarly situated

20 **UNITED STATES DISTRICT COURT**

21 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

22 GARY DAVIS, an individual; on behalf
23 of himself, and as PRIVATE
24 ATTORNEY GENERAL, and on behalf
25 of all others similarly situated,

26 Plaintiff,

27 v.

28 CHASE BANK U.S.A., N.A., a
Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No. CV 06 4804 DDP (PJWx)

(Hon. Dean D. Pregerson, Courtroom 3)

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Violation of the Consumers Legal Remedies Act;
- (2) Violation of the *California Business and Professions Code* Section 17200 et seq.: Unlawful and Unfair Business Practices;
- (3) Breach of Contract;
- (4) Breach of the Implied Covenant of Good Faith and Fair Dealing;

DEMAND FOR JURY TRIAL

1 Plaintiff Gary Davis, on behalf of himself and all other similarly situated, for
2 his complaint against CHASE BANK U.S.A., N.A. ("Chase Bank"), complains and
3 alleges as follows:

4 5 INTRODUCTION

6 1. This case arises from Chase Bank's fraudulent and unfair business
7 practice of charging its California credit card holders finance charges in connection
8 with purchases at Circuit City advertised as "no interest, no payment," "no interest
9 with minimum monthly payment," or "interest and payment free" (collectively
10 "Promotional Purchase"). Plaintiff, on behalf of himself and all individuals similarly
11 situated, seeks damages and equitable relief for violations of the California
12 Consumers Legal Remedies Act, the *California Business and Professions Code*
13 (Unfair Business Practices), for breach of contract and breach of the covenant of
14 good faith and fair dealing. Chase Bank's fraudulent and unfair business practices
15 violate the rights of unsuspecting California consumers throughout the state, for
16 which California consumer protection laws were designed.

17 18 THE PARTIES

19 2. Plaintiff, Gary Davis ("Plaintiff") is now, and at all relevant times was, a
20 resident of the County of Los Angeles, State of California.

21 3. At all relevant times, the class of Plaintiffs on behalf of which Plaintiff
22 is bringing this suit, were residents of the State of California. Such persons shall
23 hereinafter be referred to as the "Class" or "Class Members."

24 4. Plaintiff is informed and believes, and based thereon alleges that
25 Defendant Chase Bank ("Chase") is a corporation, organized and existing under the
26 laws of the State of Delaware, duly qualified as a foreign corporation to transact
27 business in the State of California, and doing business throughout the State of
28 California. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendant Chase Bank is presently and/or has engaged in business in the County of
2 Los Angeles, State of California.

3 5. At all times relevant herein, Defendant Chase Bank and Circuit City
4 Stores Inc. (herein Circuit City) offered a credit card called the "Circuit City Rewards
5 Card". This credit card conferred certain benefits to consumers who utilized the
6 credit card to make their purchases such as earning reward points redeemable at
7 Circuit City stores. Another benefit of the Circuit City Rewards Card was access to
8 Defendants' advertised promotions of "no interest, no payment" or "no interest, with
9 minimum payments" for a specified period of time on certain types of Circuit City
10 purchases. ("Promotional Purchases")

11 6. Plaintiff is informed and believes, and based thereon alleges that at all
12 times herein mentioned, Defendant Chase Bank and DOES 1 through 50, inclusive
13 (hereinafter jointly referred to as "Defendants"), are each responsible in some manner
14 for the transactions, events and occurrences herein alleged and that damages herein
15 alleged were proximately caused thereby. Plaintiff is informed and believes, and
16 based thereon alleges that each of the Doe Defendants was intentionally, negligently,
17 or in some other manner the cause, or contributing cause of, or otherwise responsible
18 for the events and happenings alleged in this complaint and for Plaintiff's injuries
19 and damages and those of the Class. Plaintiff will seek leave to amend this complaint
20 to allege the true names and capacities of each such Doe Defendant, together with
21 such additional allegations as may be appropriate, when their names, capacities, and
22 the nature of their involvement have been ascertained.

23 7. Plaintiff is informed and believes and thereon alleges that at all times
24 herein mentioned, Defendants, and each of them, were the agents, joint venturers,
25 trustees, servants, partners, alter-egos, parent corporations, contractors, and/or
26 employees of each of the remaining Defendants, and that the acts and/or omissions
27 herein alleged were done by them acting individually, through such capacity or
28 through the scope of their authority, and that such conduct was thereafter ratified by

1 the remaining Defendants.

2 8. At all relevant times, Defendants, and each of them, solicited business
3 from residents and other individuals within the State of California, conducted
4 business with consumers in the State of California, conducted business with Plaintiff
5 and others similarly situated with him herein, and solicited business from Plaintiff
6 and others similarly situated with Plaintiff, said business being the subject matter of
7 this complaint.

8 CLASS ACTION ALLEGATIONS

9 9. Plaintiff brings this class action, on behalf of himself and all others
10 similarly situated in California during all or part of the class period, as more fully
11 explained below. The questions of law or fact common to the class predominate over
12 questions affecting the individual members and, on balance, a class action is superior
13 to other methods available for adjudicating the controversy.

14 10. The proposed class Plaintiff seeks to represent is presently defined as
15 follows:

16 All persons who, in the past four years, used their Chase-Circuit City Rewards
17 Card to

18 (a) make a Non-Promotional and a Promotional Purchase in California;

19 (b) had made the minimum (or greater) payment for their non-promotional
20 purchase(s) on their prior statement closing balance ("Payment"); and

21 (c) were assessed a finance charge on their prior balance without Chase having
22 applied that Payment to their prior balance because Chase applied the payment to the
23 Promotional Purchase rather than to the prior balance.

24 11. There is a well-defined community of interest in the litigation and the
25 proposed class is easily ascertainable.

26 12. Numerosity: The Plaintiff Class is potentially so numerous that the
27 individual joinder of all members is impracticable under the circumstances of the
28 case. While the exact number of class members is unknown to Plaintiff at this time,

1 Plaintiff is informed and believes and thereon alleges that Chase's Circuit City
2 Reward Card Promotional Purchase program was a widespread program marketed
3 and promised to numerous individuals within the customer base of Defendants.

4 13. Common Questions Predominate: Common questions of law and fact
5 exist as to all class members, and predominate over any questions that affect only
6 individual members of the class. The common questions of law and fact include, but
7 are not limited to:

8 (a) Whether Defendants have engaged in practices proscribed by the
9 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(9), by
10 "advertising goods or services with intent not to sell them as advertised";

11 (b) Whether Defendants have engaged in practices proscribed by the
12 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(14),
13 by "representing that a transaction confers or involves rights, remedies or
14 obligations which it does not have or involve, or which are prohibited by law";

15 (c) Whether Defendants have engaged in practices proscribed by the
16 Consumer Legal Remedies Act, *Civil Code* section 1770, subsection (a)(19),
17 by "inserting an unconscionable provision in the contract";

18 (d) Whether Defendants have violated the Consumer Legal Remedies
19 Act, *Civil Code* section 1750 et seq., by engaging in other and/or additional
20 practices proscribed therein;

21 (e) Whether Defendants' conduct is "unlawful," "unfair" or
22 "fraudulent" within the meaning of California's Unfair Business Practices Act,
23 *Business and Professions Code* section 17200, et seq.

24 (f) Whether in their uniform, written credit applications and
25 marketing materials, Defendants have failed to disclose material terms of
26 Defendants' Promotional Purchase offer;

27 (g) Whether Defendants made uniform, material false representations
28 to the effect that consumers would not be charged interest on Promotional

1 Purchases.

2 14. Typicality: Plaintiff's claims are typical of the claims of the members of
3 the Plaintiff Class. Due to Defendants' common course of conduct, Plaintiff and all
4 members of the Plaintiff Class have been unwittingly forced to pay off the
5 Promotional Purchases prior to the expiration of the advertised grace period for such
6 payments and have been assessed a finance charge or charges in connection with a
7 purchase advertised as "interest and payment free" if made with their Circuit City
8 Rewards Card.

9 15. Adequacy: Plaintiff will fairly and adequately protect the interests of the
10 members of Plaintiff Class. Plaintiff resides in California and has been charged
11 finance fees in connection with one or more Promotional Purchases. Plaintiff has
12 retained counsel who have substantial experience in complex civil litigation and class
13 actions.

14 16. Superiority: The class action is superior to other available means for the
15 fair and efficient adjudication of the claims of Plaintiff. The damages suffered by
16 each individual Class Member may be limited. Damages of such magnitude are small
17 given the burden and expense of individual prosecution of the complex and extensive
18 litigation necessitated by Defendants' conduct. Further, it would be virtually
19 impossible for the members of the Class individually to redress effectively the
20 wrongs done to them. Even if the Class Members themselves could afford such
21 individual litigation, the court system could not. Individualized litigation presents a
22 potential for inconsistent or contradictory judgments. Individualized litigation
23 increases the delay and expense to all parties and the court system presented by the
24 complex legal and factual issues of the case. By contrast, the class action device
25 presents far fewer management difficulties, and provides the benefits of single
26 adjudication, economy of scale, and comprehensive supervision by a single court.
27 Certification is also appropriate given the anticipated need to create a fluid recovery
28 fund.

1 17. Plaintiff is unaware of any particular difficulties that are likely to be
2 encountered in the management of this action that would preclude its maintenance as
3 a class action.

4 **GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

5 18. Defendants solicited Plaintiff and others similarly situated to make
6 purchases at Circuit City using Defendants' Circuit City Rewards Card and in
7 exchange for using its services, Plaintiff and others similarly situated were eligible to
8 receive an interest and payment free period in which to pay off the balance on certain
9 purchases described herein as "Promotional Purchases."

10 19. From time to time, Defendants advertise the ability to make Promotional
11 Purchases. These advertisements offer "no interest, no payments" or "no interest with
12 minimum payments" for a variable period based on the amount of the purchase. For
13 example, a Circuit City Rewards Card promotional item offered to consumers in
14 2006, states in large writing: "No interest! No payments! For six months when you
15 spend \$499 or more. For 90 days when you spend \$299 or more." "It is easy to take
16 advantage of this offer! When you make a purchase with your Circuit City credit
17 card, present this certificate to the store associate to scan." (A true and correct copy
18 of this Circuit City Rewards Card promotional material is attached hereto as Exhibit
19 A).

20 20. Plaintiff is informed and believes and thereon alleges that this
21 promotional material as well as variations of this promotional material, advertising
22 "no interest, no payment" for a specified period of time, was provided or made
23 available, from time to time, to each of the Class Members.

24 21. On March 3, 2006, Plaintiff purchased a television set from Circuit City,
25 charging \$2,000 to his Chase Circuit City Rewards Card. Although Plaintiff did not
26 request that this item be treated as a Promotional Purchase, Defendants nevertheless
27 automatically treated this item as a Promotional Purchase, with the term of no interest
28 with minimal payment until January 2008.

1 22. Prior to the purchase of the subject television, Defendant Chase Bank
2 billed Plaintiff for purchases made between January 14, 2006, and February 13, 2006
3 (“February Statement”), on his Circuit City Rewards Card. Payment was due by
4 March 10, 2006, and if Payment was posted by March 10, 2006, no finance charge
5 should be applied because the balance would have been paid in full. Alternatively, if
6 partial Payment was made either of the minimum amount or a greater amount, then a
7 finance charge should be applied only against the remaining balance after subtracting
8 the Payment made. Plaintiff returned two items and made two on-line payments
9 consisting of the total amount owing on March 4, 2006, and March 6, 2006, thereby
10 paying the February Statement balance in full and on time.

11 23. Based on the language appearing in each of his monthly statements,
12 Plaintiff was informed and believed that he would not be assessed a finance charge if
13 his monthly billings were paid in full, or that any finance charge would be based only
14 on the remaining balance after any partial Payment had been subtracted from the
15 outstanding balance. Each billing statement received by Plaintiff states: “[W]e do not
16 charge periodic finance charges on new purchases billed during the billing cycle if
17 we receive payment of your New Balance by the date and time your payment is due
18 as shown on your billing statement and we received payment of your New Balance
19 on your previous billing statement by the date and time your payment was due as
20 shown on that billing statement.” (A true and correct copy of the February Statement
21 is attached hereto as Exhibit B).

22 24. Sometime after March 13, 2006, Plaintiff received his monthly statement
23 from Defendant Chase Bank for purchases made between February 14, 2006, and
24 March 13, 2006 (“March Statement”). Although plaintiff had paid the February
25 Statement balance in full and in a timely manner, Defendant Chase Bank assessed a
26 \$77.25 finance charge which appeared on the March Statement. (A true and correct
27 copy of the March Statement is attached hereto as Exhibit C).

28 25. Plaintiff is informed and believes, and based thereon alleges that he was

1 assessed the \$77.25 finance charge because his entire February Statement Payment
2 was applied against the \$2,000 Promotional Purchase, payment for which was not
3 due, instead of to the February Statement balance, thereby leaving a balance due
4 against which finance charges were charged. The \$2,000 charge for the television
5 was made subsequent to the issuance of the February Statement, and no Payments of
6 any kind were due and owing for the Promotional Purchase until January 2008.
7 Nevertheless, Defendant Chase Bank allocated the entire \$1,736.91 that Plaintiff paid
8 on his February Statement to the March 3, 2006, Promotional Purchase, even though,
9 as advertised, no amounts were due and owing on that item.

10 26. Chase assessed similar finance charges against Plaintiff on at least two
11 (2) other prior occasions involving the same type of Promotional Purchase, where
12 payments were not due for a specified period of time, but Chase nevertheless
13 allocated all of Plaintiff's payments to the Promotional Purchase. Plaintiff is
14 informed and believes, and based thereon alleges that thousands of other similarly
15 situated Class Members made similar types of Promotional Purchases at Circuit City
16 using Chase's Circuit City Rewards Card, which Chase treated as Promotional
17 Purchases subject to terms of "no interest, no payment" or "no interest with minimal
18 payment" for a specified period of time, but were thereafter charged a finance charge
19 in a manner similar, or identical to that of Plaintiff.

20 27. Chase fails to disclose that all payments made by the consumer on his or
21 her regular monthly statement are given priority of payment to the promotional item,
22 even if not yet billed and even if not due for many months.

23 28. The promotional offer conveys that the consumer will receive a benefit
24 of a grace period of anywhere from a few months to two (2) years or more. Plaintiff
25 is informed and believes, and based thereon alleges, however, that the offer is a scam
26 used to induce consumers into believing that they will have an extended time period
27 in which to pay off their Promotional Purchases, when in fact, the consumer has less
28 time to pay off the Promotional Purchases due to Chase's practice of allocating

1 consumers' Payments as described herein.

2 29. Plaintiff is informed and believes, and based thereon alleges that
3 Defendant Chase Bank knows of the terms and conditions of such Promotional
4 Purchases, and that Chase's practice of prioritizing the allocation of credit card
5 payments to purchases not yet due and owing is deceptive, misleading, fraudulent,
6 unfair and in violation of California law. Plaintiff further is informed and believes,
7 and based thereon alleges that Defendant Chase Bank's practice of prioritizing the
8 allocation of credit card payments to purchases advertised as "interest and payment
9 free" is especially egregious and violative of California law as this practice directly
10 contradicts the concept of "interest and payment free."

11 30. Plaintiff, on behalf of himself and all others similarly situated, seeks
12 damages and equitable relief, including restitution, for violations of the California
13 Consumers Legal Remedies Act, the *California Business and Professions Code*
14 (Unfair Business Practices), breach of contract and of the covenant of good faith and
15 fair dealing. On behalf of himself and the proposed Class Members, and to the
16 extent appropriate, on behalf of the general public of California, Plaintiff seeks,
17 among other things, injunctive relief, equitable relief, including restitution and
18 disgorgement, and actual and punitive damages, and attorney's fees.

19 31. Following the filing of this case, Chase moved to compel arbitration and
20 to enforce a class action waiver on the basis of an arbitration clause contained in its
21 cardmember agreement. An arbitration clause containing a class action waiver was
22 not part of Plaintiff's original cardmember agreement, but subsequent to the issuance
23 of Plaintiff's credit card, Chase introduced a new arbitration clause containing a class
24 action waiver in a "bill stuffer" that was sent to its Cardmembers as part of their
25 monthly billing. Chase sought to change the arbitration clause pursuant to the
26 "change of terms" clause in the Cardmember agreement, which Chase contends
27 gives it the right to unilaterally change any provision of the cardmember agreement at
28 any time, without any consideration provided to the cardholder.

1 32. On March 26, 2007, the trial court denied Chase's motion, finding
2 Chase's arbitration clause to be both procedurally and substantively unconscionable
3 under California law. Plaintiff's counsel had to expend time and effort in opposing
4 Chase's motion, and Plaintiffs incurred attorneys fees in opposing the motion.

5 33. Chase then appealed the trial court's order, and the matter was tied up at
6 the 9th Circuit Court of Appeal for about 1 ½ years, until the Court of Appeal
7 rendered its decision on November 3, 2008, affirming the trial court's determination
8 that Chase's arbitration clause and class action waiver are unconscionable and
9 unenforceable.

10 34. The Plaintiff Class has been damaged by Chase's assertion of both an
11 unconscionable arbitration clause as well as unconscionable "Change of Terms"
12 provision, in that they expended significant attorneys fees at both the trial and
13 appellate level to defeat Chase, and has been further damaged because the case has
14 been stayed for almost 2 years while the matter was pending at the 9th Circuit.
15 During that time, Chase continued its illegal practices, and continued to collect
16 finance charges and penalties from class members to which Chase is not entitled.
17 Accordingly, pursuant to the recent California Supreme Court decision of *Meyer v.*
18 *Sprint Spectrum* (2009) WL197560, Plaintiff has standing under the Consumer Legal
19 Remedies Act to seek removal of Chase's unconscionable contract provisions.

20 **FIRST CAUSE OF ACTION**

21 (Violation of the Consumers Legal Remedies Act)

22 (Against All Defendants)

23 35. Plaintiff incorporates by reference paragraphs 1 – 34 above as though
24 fully set forth herein.

25 36. Defendant is a "person" and it provides "goods" and "services" within
26 the meaning of the *Civil Code* sections 1761(c) and 1770.

27 37. Purchasers of Circuit City Promotional Purchases with the Chase Circuit
28 City Rewards Card, including Plaintiff and Class Members, are "consumers" within

1 the meaning of the *Civil Code* section 1761(d) and 1770. Plaintiff's and each Class
2 Member's Promotional Purchase with the Chase Circuit City Rewards Card
3 constitutes a "transaction" within the meaning of *Civil Code* sections 1761(e) and
4 1770.

5 38. As set forth herein, Defendants' acts, practices, representations,
6 omissions, cardmember agreement and course of conduct violates section 1770
7 (a)(9), (14), and (19) of the Consumers Legal Remedies Act in that Defendants: (a)
8 advertised goods or services with the intent not to sell them as advertised; (b)
9 represented that the transaction conferred or involved rights, remedies or obligations
10 that it did not have or involve; and (c) inserted unconscionable provisions in the
11 Cardmember agreement.

12 39. The original complaint constituted notice to Defendants pursuant to
13 *California Civil Code* section 1782 of the unlawful, unfair and fraudulent business
14 practices as complained herein and formally demanded that Defendants: (1) cease
15 and desist all advertising, promotional and sales activities and practices described
16 herein; (2) cease the promotion of its "interest and payment free" credit card through
17 the use of deceptive and misleading advertising devices as described herein; (3) cease
18 the practice of prioritizing the application of consumers' credit card payments to
19 Promotional Purchases; (4) disclose to all consumers' Defendants' deceptive and
20 illegal practices; and (5) remove the unconscionable provisions from its cardmember
21 agreements.

22 40. Defendants failed to comply with the demands as stated above, and
23 therefore this First Amended Complaint seeks an order, pursuant to *California Code*
24 *of Civil Procedure* section 1780 et seq.: (1) directing Defendants to cease and desist
25 all advertising, promotional and sales activities and practices described herein; (2)
26 enjoining Defendants from the promotion of its "interest and payment free" credit
27 card through the use of deceptive and misleading advertising devices as described
28 herein; (3) directing Defendants to disgorge, for the benefit of Class Members, its

1 profits and compensation emanating from its "interest and payment free" scheme,
2 and/or make full restitution to Plaintiff and Class Members; and (4) enjoining
3 Defendant Chase Bank from prioritizing the application of consumers' credit card
4 payments to Promotional Purchases; and (5) enjoining Defendants from any further
5 use of an arbitration clause with a class action waiver, or a "change of terms"
6 provision within its Cardmember agreements. Moreover, Plaintiffs now also seek all
7 available compensatory and punitive damages, costs of litigation, attorneys' fees and
8 such other relief as is authorized under applicable provisions of the CLRA.

9 SECOND CAUSE OF ACTION

10 (For Violation of the *California Business and Professions Code*
11 *Section 17200 et seq.*: Unlawful and Unfair Business Practices)
12 (Against All Defendants)

13 41. Plaintiff incorporates by reference paragraphs 1 – 40 above as though
14 fully set forth herein. Plaintiff has suffered injury in fact and has suffered financial
15 loss as a result of Defendants' conduct as alleged in this cause of action.

16 42. Defendants' acts, conduct and practices as described herein constitute
17 unlawful business acts and practices within the meaning of *California Business and*
18 *Professions Code* sections 17200 et seq.

19 43. Defendants' acts, conduct and practices were unlawful, in that
20 Defendants violated the Consumers Legal Remedies Act, as alleged herein.

21 44. Defendants' acts, conduct, practices, and unconscionable cardmember
22 agreement as described herein, constitute unfair, fraudulent, and deceptive business
23 acts and practices within the meaning of *California Business and Professions Code*
24 sections 17200 et seq.

25 45. Defendants' acts, conduct and practices, as alleged herein, were unfair,
26 in that any utility for Defendants' conduct is outweighed by the gravity of the
27 consequences to Plaintiff, Class Members, and the general public, and/or Defendants'
28 conduct is immoral, unethical, oppressive, unscrupulous or substantially injurious to

1 Plaintiff, Class Members and the general public.

2 46. Defendants' acts, conduct and practices, as alleged herein, were
3 fraudulent, in that they were likely to and did deceive Plaintiff, Class Members and
4 the general public, and Defendants engaged in such acts, conduct, and practices
5 knowingly.

6 47. Defendants' unfair, fraudulent, and deceptive business acts and practices
7 are described herein and include, but are not limited to, the following:

8 (a) Advertising promotional items as interest and payment free when
9 purchased with a Chase Circuit City Rewards Card when in fact, interest and
10 finance charges were frequently applied;

11 (b) Charging a finance fee despite Payment of the monthly balance in
12 part or in full, without deducting the Payment made before assessing any
13 finance charge;

14 (c) Applying monthly Payments to Promotional Purchases not yet
15 billed or owing instead of to the balance as billed in the monthly statement
16 due; and

17 (d) Inserting an unconscionable arbitration and class action waiver
18 clause and "change of terms" clause in its Cardmember Agreement.

19 48. As a direct and proximate result of Defendants' unfair, unlawful and
20 fraudulent business practices as alleged herein, Defendants were able to: (a) issue
21 more credit cards to Chase customers than they otherwise would have; (b) receive
22 more credit card purchases than they otherwise would have; and/or (c) charge more
23 finance charges than they otherwise would have, and accordingly, Defendants
24 received and are in possession of excessive and unjust revenues and profits.

25 49. Plaintiff, on behalf of himself and all others similarly situated in
26 California, and where appropriate, on behalf of the general public of California, seeks
27 an order including, but not limited to (1) directing Defendants to cease and desist all
28 advertising, promotional and sales activities and practices described herein; (2)

1 enjoining Defendants from the promotion of their "interest and payment free" credit
2 card through the use of deceptive and misleading advertising devices as described
3 herein; (3) directing Defendants to disgorge, for the benefit of Class Members, their
4 profits and compensation emanating from their "interest and payment free" scheme,
5 and/or make full restitution to Plaintiff and Class Members; (4) enjoining Defendant
6 Chase Bank from prioritizing the application of consumers' credit card payments to
7 Promotional Purchases; and (5) removing the unconscionable arbitration and class
8 action waiver and change of terms provisions from its cardmember agreements.
9 Plaintiff also seeks any other relief the Court deems acceptable, in accordance with
10 section 17203 of the Business and Professions Code. Plaintiff also seeks costs of
11 litigation, attorneys' fees pursuant to *California Code of Civil Procedure* §1021.5,
12 and such other relief as the Court deems proper.

13 **THIRD CAUSE OF ACTION**

14 (Breach of Contract)

15 (Against Defendant Chase Bank and Does 1 - 50)

16 50. Plaintiff incorporates by reference paragraphs 1 – 49 above as though
17 fully set forth herein.

18 51. Defendant Chase Bank offered Plaintiff and Class Members a no
19 interest, no payment grace period on Promotional Purchases made using their Chase
20 Circuit City Rewards Card.

21 52. Plaintiff and Class Members made Promotional Purchases as offered by
22 Defendant Chase Bank.

23 53. Defendant Chase Bank breached these contracts by prioritizing the
24 allocation of credit card Payments to purchases offered and accepted as interest and
25 payment free ahead of non-promotional items appearing on the monthly statement.
26 Defendant Chase Bank further breached these contracts by charging an interest fee on
27 balances that remained due to this allocation of Payments.

28 54. By reason of Defendants' breach of Plaintiff's and other Class Members'

1 respective contracts, Plaintiffs and other Class Members have been damaged in the
2 manner set forth herein, in an amount to be determined at trial.

3 **FOURTH CAUSE OF ACTION**

4 (Breach of the Implied Covenant of Good Faith and Fair Dealing)

5 (Against Defendant Chase Bank and Does 1 – 50)

6 55. Plaintiff incorporates by reference paragraphs 1 – 54 above as though
7 fully set forth herein.

8 56. Every contract imposes upon each party a duty of good faith and fair
9 dealing in its performance. The Promotional Purchases made by Plaintiff and Class
10 Members with their Circuit City Rewards Card contained an implied covenant of
11 good faith and fair dealing. The covenant requires that neither party to the
12 Promotional Purchase agreement do anything to infringe upon the other party's rights
13 to the benefits of the agreement.

14 57. Defendant Chase Bank's conduct, as set forth herein, has breached each
15 of the implied covenants of good faith and fair dealing.

16 58. For example, Defendant Chase Bank has materially breached the implied
17 covenant of good faith and fair dealing by:

18 (a) Promising purchasers of Circuit City Promotional Purchases they
19 would receive a payment free period in which to payoff their purchase, when,
20 in fact, Defendant Chase Bank prioritized the allocation of Payments to
21 Promotional Purchases;

22 (b) Promising purchasers of Circuit City Promotional Purchases they
23 would receive an interest free period in which to payoff their purchase, when,
24 in fact, Defendant Chase Bank charged interest fees in connection with
25 Promotional Purchases.

26 59. As a direct result of material breaches of the implied covenant of good
27 faith and fair dealing by Defendants, as set forth herein, Plaintiffs have been damaged
28 as may be shown according to proof at the time of trial.

1 **WHEREFORE**, Plaintiff, on Plaintiff's own behalf and on behalf of the Class
2 Members, prays for judgment as follows:

3 1. For an order certifying the Plaintiff Class and appointing Plaintiff and
4 his counsel to represent the Class;

5 2. For an order awarding compensatory damages in an amount which may
6 be proven at trial, together with interest thereon;

7 3. For an order awarding restitution and/or disgorgement and other
8 equitable relief as the Court deems proper;

9 4. For an order awarding exemplary damages in an amount to deter and
10 punish;

11 5. For an order awarding pre-judgment and post-judgment interest, as well
12 as their reasonable attorneys' and experts' witness fees and other costs;

13 6. For an order enjoining Defendants from continuing to engage in unfair
14 business practices and false advertising; and,

15 7. For an order awarding such other and further relief as this Court may
16 deem just and proper.

17
18 DATED: March 11, 2009

ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

19
20 By: 

DREW E. POMERANCE

BURTON E. FALK

Attorneys for Plaintiff GARY DAVIS,
individually and on behalf of himself, and as
Private Attorney General and on behalf of all
others similarly situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all matters for which a jury trial is guaranteed.

DATED: March 11, 2009 ROXBOROUGH, POMERANCE, NYE & ADREANI, LLP

By: 

BREW E. POMERANCE

BURTON E. FALK

Attorneys for Plaintiff GARY DAVIS,
individually and on behalf of himself, and as
Private Attorney General and on behalf of all
others similarly situated

EXHIBIT

A

Get 5% Rewards



NO ANNUAL FEE

**Apply now.
Just what I needed.**

APPLICATION

Please process immediately


BUSINESS REPLY MAIL

FIRST-CLASS MAIL PERMIT NO 218 KENNESAW, GA

POSTAGE WILL BE PAID BY ADDRESSEE

CHASE CARD SERVICES.
PO BOX 100017
KENNESAW GA 30144-9909

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES



5% Rewards at Circuit City

Shop at Circuit City
and circuitcity.com

Look inside to find out more or
ask your store associate to sign
you up today

circuit city rewards

TERMS & CONDITIONS

Authorization: When you sign and return the form for this credit card offer from Chase Bank USA, N.A. ("Chase," "we" or "us"), you agree to the following:

1. You authorize us to obtain credit bureau reports in connection with your request for an account. If an account is opened, we may obtain credit bureau reports in connection with extensions of credit or the review or collection of your account. If you ask, we will tell you the name and address of each credit bureau from which we obtained a report about you.

2. If an account is opened, you will receive a Cardmember Agreement and Terms and Conditions of the *Circuit City Rewards* Program with your card(s). By using the account or any card, or authorizing their use, you agree to the terms of the Cardmember Agreement and Terms and Conditions of the *Circuit City Rewards* Program.

3. You authorize us to allocate your payments and credits in a way that is most favorable to you or convenient for us. For example, you authorize us to apply your payments and credits to balances with lower APRs (such as promotional APRs) before balances with higher APRs.

4. Claims and disputes are subject to arbitration.

5. As described in the Cardmember Agreement, we reserve the right to change the terms of your account (including the APRs) at any time, for any reason. In addition to APR increases that may occur for failure to comply with the terms of your account.

We will review your credit history and income to determine if you qualify for an account and, if so, your APRs and credit line. Based on this review, you may not receive a card or you may receive a card with a credit line as low as \$500.

The minimum gross annual income required for an account is \$14,400. You must be at least 18 years old to qualify (19 in AL and NE).

We reserve the right to change the benefit features associated with your card at any time.

Ohio Residents: The Ohio laws against discrimination require that all creditors make credit equally available to all customers, and that credit reporting agencies maintain separate histories on each individual upon request. The Ohio Civil Rights Commission administers compliance with the law.

Notice to Married Wisconsin Residents: No provision of any marital property agreement, unilateral statement or court decree adversely affects our rights, unless you give us a copy of such agreement, statement or court order before we grant you credit, or we have actual knowledge of the adverse obligation. All obligations on this account will be incurred in the interest of your marriage or family. You understand that we may be required to give notice of this account to your spouse. Married Wisconsin residents must furnish their (the applicant's) name and social security number as well as the name and address of their spouse to Cardmember Service at P.O. Box 108945, Kansas City, MO 64115-9245.

Affiliate Information Sharing: Chase Bank USA, N.A. is part of JPMorgan Chase & Co. We and our JPMorgan Chase & Co. affiliates may share information about you among affiliates in order to offer products and services of interest to you. If you would prefer that we do not share information from your application, credit bureau or third parties, please call us at 1-800-573-7138. For more information about our information handling policies, visit us on the web at <http://www.chase.com/privacy-policy>.

Omission of any information requested on the form may be reason for denial of an account. This offer is available only to applicants who reside in the United States of America. The credit disclosures given on this offer were printed on the print date indicated and were accurate as of that date. The credit information is subject to change after the printing date. You should contact us for any change after the printing date by writing to Cardmember Service, P.O. Box 108945, Kansas City, MO 64115-9245.

We comply with Section 326 of the USA PATRIOT Act. This law mandates that we verify certain information about you while processing your account application.

RATE, FEE AND OTHER COST INFORMATION

	Circuit City Rewards Visa	Circuit City Rewards Proprietary Card
Annual Percentage Rate (APR) for purchases	15.24% variable or 17.24% variable, depending on our review of your application and credit history.	21.74% variable or 24.00% fixed, depending on our review of your application and credit history.
Other APRs	Balance Transfer APR: 15.24% variable or 17.24% variable, depending on our review of your application and credit history. Cash Advance APR: 21.49% variable Default rate: 24.9% fixed. See explanation below. ^{a,c} Deferred/Accumulated Finance Charge Rate: 22.24% variable.	Cash Advance APR: Not available Default rate: 24.9% fixed or 26.9% fixed, depending on our review of your application and credit history. See explanation below. ^{a,c} Deferred/Accumulated Finance Charge Rate: 22.24% variable or 24.00% fixed, depending on our review of your application and credit history.
Variable rate information	The following APRs may vary monthly based on the Prime Rate: ^a Purchase and Balance Transfer APR equals the Prime Rate plus, as applicable, 9.49% or 11.49%, but not less than 13.99% or 15.99% respectively. Cash advance APR equals the Prime Rate plus 15.74%, but not less than 19.99%. Deferred/Accumulated Finance Charge APR equals the Prime Rate plus 16.49%, but not less than 20.49%.	The following APRs may vary monthly based on the Prime Rate: ^a Purchase APR equals the Prime Rate plus 15.99%, but not less than 20.49% or more than 24.00%. The variable Deferred/Accumulated Finance Charge APR equals the Prime Rate plus 16.49%, but not less than 20.49%.
Grace period for repayment of purchase balances	At least 20 days, but none for balance transfers, convenience checks, or overdraft advances, if applicable.	At least 20 days.
Method of computing the balance for purchases	Two-cycle average daily balance method (including new purchases).	
Annual fee	None	
Minimum finance charge	\$1.00	
Transaction fee for convenience checks	All cash advances: 3% of the amount of the advance, but not less than \$10.00.	Not available
Transaction fees for cash advances	All cash advances: 3% of the amount of the advance, but not less than \$10.00 or more than \$75.00.	Not available
Late Payment fee: Circuit City Rewards Visa: \$15.00 on balances up to but not including \$250, \$35.00 on balances of \$250 and over. However, if you already have made one or more late payments in the prior 12 month period, \$35.00 regardless of the amount of your balance. Circuit City Rewards Card: \$35.00		
Over-the-Credit-Limit fee: \$35.00 for Circuit City Rewards Visa; None for Circuit City Rewards Card.		
International Transactions: 3% of the converted transaction amount. None for Circuit City Rewards Card.		

(You understand that the terms of your account, including the APRs, are subject to change. This means that the APRs for this offer are not guaranteed; APRs may change to higher APRs, fixed APRs may change to variable APRs, or variable APRs may change to fixed APRs. We reserve the right to change the terms (including the APRs) at any time for any reason. In addition to APR increases that may occur for failure to comply with the terms of your account. Any changes will be in accordance with your Cardmember Agreement.

Your APRs may increase if you default under any Cardmember Agreement you have with us for any of the following reasons: we do not receive, or any payment that is owed on this Account or any other account or loan with us, at least the minimum payment due by the date and time due; you exceed your credit line on this Account, if applicable; you fail to make payment to another creditor when due; you make a payment to us that is not honored by your bank; or, if at any time after your Account is closed, we demand immediate payment of your outstanding balance and we do not receive payment within the time we specify.

We may consider the following factors to determine the default rate: the length of time your Account has been open; the existence, seriousness and timing of defaults; other indications of your Account usage and performance; and information about your other relationships with us and of our related companies or from consumer credit bureaus.

**Apply now for
the Circuit City®
Rewards Visa®
and get 5% rewards**

The applicant, if married, may apply for a separate account. After credit approval each applicant shall have the right to use the credit card account up to the credit limit of the account. Each applicant may be liable for amounts extended under the plan to any joint applicant.

YOU ARE APPLYING FOR A CIRCUIT CITY REWARDS VISA ACCOUNT. IF YOU DO NOT QUALIFY FOR THIS ACCOUNT, CHASE MAY CONSIDER YOU FOR A CIRCUIT CITY REWARDS CARD ACCOUNT.

• You may contact us with any questions by calling us toll-free at 1-800-603-8987 or by writing us at P.O. Box 100045, Kennesaw, GA 30156-9245 •

APPLICANT INFORMATION Please Print Clearly									
LAST NAME (Initials) (Required)		FIRST NAME (Required)		M.I.		DATE OF BIRTH (Required) Month Day Year		SOCIAL SECURITY NUMBER (Required)	
STREET ADDRESS (NO P.O. BOXES) (Required)		CITY (Required)		STATE (Required)		ZIP (Required)		HOME PHONE # (Required)	
HOME TYPE <input type="checkbox"/> OWN HOUSE, CONDO, TOWNHOUSE <input type="checkbox"/> RENT <input type="checkbox"/> LIVE WITH PARENTS <input type="checkbox"/> OTHER		OWN MOBILE HOME <input type="checkbox"/> YES <input type="checkbox"/> NO		TIME AT CURRENT ADDRESS Years Months		PURCHASE CATEGORY <input type="checkbox"/> TV <input type="checkbox"/> VCR/CAMCORDER <input type="checkbox"/> AUDIO <input type="checkbox"/> HOME OFFICE		<input type="checkbox"/> CAR STEREO/PHONE <input type="checkbox"/> PERSONAL STEREO/OTHER <input type="checkbox"/> N/A	
PRIOR ADDRESS IF LESS THAN 2 YEARS AT CURRENT ADDRESS		CITY		STATE		ZIP		GROSS MONTHLY INCOME FROM ALL SOURCES \$ <small>Authority, child support or alimony maintenance income need not be revealed if you do not wish to have it considered as a basis for reviewing this application.</small>	
EMPLOYER'S NAME (OR NAME OF BUSINESS IF SELF-EMPLOYED)		JOB TITLE (IF SALARIED, LIST PAY GRADE)		TIME AT PRESENT JOB		CHECK BOX IF <input type="checkbox"/> RETIRED OR <input type="checkbox"/> SELF-EMPLOYED		RELATIVE'S PHONE # () ()	
WORK PHONE # () ()		NAME (LAST, FIRST) OF NEAREST RELATIVE NOT LIVING WITH YOU		DRIVERS LICENSE		DATE OF BIRTH (Required) Month Day Year		STATE	
PLEASE CHECK WHICH ACCOUNTS ARE IN YOUR NAME <input type="checkbox"/> CHECKING ACCOUNT <input type="checkbox"/> SAVINGS ACCOUNT <input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> DISCOVER <input type="checkbox"/> AMERICAN EXPRESS <input type="checkbox"/> DEPARTMENT STORE CARDS <input type="checkbox"/> OTHER LOAN									
CO-APPLICANT INFORMATION									
As the Co-Applicant, you are obligated to use the account if you and the Applicant (with the family) and severely ill/absent for all amounts due on this account. This bank can require payment of all loans you are the signatory.									
LAST NAME (Initials) (Required)		FIRST NAME (Required)		M.I.		DATE OF BIRTH (Required) Month Day Year		SOCIAL SECURITY NUMBER (Required)	
STREET ADDRESS (NO P.O. BOXES) (Required)		CITY (Required)		STATE (Required)		ZIP (Required)		HOME PHONE # (Required)	
EMPLOYER'S NAME (OR NAME OF BUSINESS IF SELF-EMPLOYED)		JOB TITLE (IF SALARIED, LIST PAY GRADE)		GROSS MONTHLY INCOME FROM ALL SOURCES \$ <small>Authority, child support or alimony maintenance income need not be revealed if you do not wish to have it considered as a basis for reviewing this application.</small>		WORK PHONE # () ()		RELATIONSHIP TO APPLICANT	
PLEASE CHECK WHICH ACCOUNTS ARE IN YOUR NAME <input type="checkbox"/> CHECKING ACCOUNT <input type="checkbox"/> SAVINGS ACCOUNT <input type="checkbox"/> VISA <input type="checkbox"/> MASTERCARD <input type="checkbox"/> DISCOVER <input type="checkbox"/> AMERICAN EXPRESS <input type="checkbox"/> DEPARTMENT STORE CARDS <input type="checkbox"/> OTHER LOAN									
OPTIONAL TOTAL PROTECTION™ PLAN									
YES! Please enroll me in optional Total Protection™ Debt Cancellation Plan at a cost of \$85 per \$100 of my average daily balance. I acknowledge receipt of the "Important Total Protection™ Disclosure" included with this offer.									
I have read and understand a copy of the Credit Card Agreement with Chase (the "Agreement") which is made a part of this application by reference. I agree to the terms of the Agreement, including the provisions governing a security interest in durable goods purchased by me from Chase. I understand that any claims or disputes are subject to arbitration as described in the Agreement. By signing below, I certify that everything stated in the application is true and correct and I grant Chase permission to check my credit and employment history and obtain my credit report. Based on a review of that information, Chase will determine if I qualify for an account and, if so, my interest rate, fees and credit limit. I agree to pay all amounts due on this account in accordance with the Agreement. I acknowledge that I have received the Important Total Protection™ Disclosure and agree to its terms. I agree to the terms of the Total Protection™ Program Summary within the credit card agreement.									
APPLICANT'S SIGNATURE DATE X CO-APPLICANT'S SIGNATURE DATE X									

Please detach along the perforated line. Moistens here, fold, seal and mail.



**Your Circuit City
Rewards Visa comes
loaded with extra value
You Choose What's Best**

If a special financing offer is available, you can select the financing offer instead of the rewards points. You make the choice!

Auto Rental Insurance

Save up to \$13 a day.

on additional insurance

costs with the Visa Auto Rental Collision Damage Waiver.

Just decline the collision damage waiver offered by the rental company.

Worldwide Acceptance and Cash Access

**Your Circuit City Rewards Visa® is
accepted at any location worldwide
that accept Visa credit cards.
Plus, if you ever need quick
cash, just use your card in the
Visa Global ATM Network.**

Zero Liability³

You're protected from unauthorized use of your card or account information — so you pay nothing for unauthorized transactions.

1% Rewards
everywhere else
Visa is
accepted

Important Total Protection™ Debt Cancellation Information

Your purchase of Total Protection™ is optional. Whether or not you purchase Total Protection will not affect your application for credit or the terms of any existing credit agreement you have with Chase Bank USA, N.A. The monthly fee for Total Protection is \$.89 per \$100 of your account balance based on your Average Daily Balance on the last day of your billing cycle. You have the right to cancel Total Protection at any time. The bank will automatically cancel Total Protection if your account becomes more than 90 days delinquent. The bank may cancel Total Protection upon 30 days written notice to you. There are eligibility requirements, conditions, and exclusions that could prevent you from receiving benefits under Total Protection. You will find a complete explanation of the eligibility requirements, conditions, and exclusions (in sections 4, 5, 6, 7, 8, 11, and 13 of the Total Protection Program Terms and Conditions ("Terms and Conditions") that will be mailed to you upon your receipt of your card.

*The above is merely a summary of the Total Protection Terms and Conditions that you will receive in your enrollment package...In the event of a conflict between this summary and the Total Protection Terms and Conditions, the Terms and Conditions shall control.

Apply Now!

- See a store associate
- Mail in your application
- Apply online at circuitcity.com

EXHIBIT

B



021306 Statement

CHASE

41041400149340390000110000002752685

CHASE CARDMEMBER SERVICE
PO BOX 100044
KENNESAW, GA 30156-9244

ACCOUNT # 4104 1400 1493 4039
NEW BALANCE \$2,752.68
PAYMENT DUE DATE 03/10/06
MINIMUM PAYMENT DUE \$110.00



CHASE CARDMEMBER SERVICE
PO BOX 94010
PALATINE, IL 60094-4010

MAIL
CHECK
TO:

MAKE CHECKS PAYABLE TO CHASE

\$ 
AMOUNT ENCLOSED



GARY J DAVIS
3126 ROBERTS AVE
CULVER CITY CA 90232-7415

M0117887

PLEASE INDICATE ANY CHANGE TO ADDRESS OR TELEPHONE BELOW OR VISIT WWW.CIRCUITCITYREWARDS.COM

Street Address _____ Home Telephone (____) _____
City-State-Zip _____ Business Telephone (____) _____ ☐ Detach Here

FINANCE SUMMARY

Previous Balance \$1,495.99
Payments and Credits \$1,781.13
Cash Advances \$0.00
Purchases/Adjustments \$2,956.45
FINANCE CHARGES (\$382.37)
New Balance \$2,752.68

ACCOUNT INFORMATION

Statement Closing Date 02/13/06
Days in Billing Cycle 31
New Balance \$2,752.68
Credit Line \$5,000.00
Available Credit \$3,247.32
Available Cash Advance \$1,800.00

ACCOUNT # 4104140014934039
Payment Due Date 03/10/06
MINIMUM PAYMENT DUE \$110.00

CALL 1-866-522-7587 TO MAKE YOUR
PAYMENT OVER THE PHONE OR
VISIT US ONLINE AT
WWW.CIRCUITCITYREWARDS.COM

TRANSACTION DETAIL

Trans #	Transaction Date	Reference Number	Transactions	Charges & Credits
16	01/12	6013275174011037	SOUP PLANTATION #17 LOS ANGELES CA	11.24
16	01/12	6013349544161698	RALPHS #0284 SEA CULVER CITY CA	7.80
16	01/14	0397718004897000	CIRCUIT CITY PURCHASE (21.30" AND LARGER TV'S)	933.53
16	01/14	6015730150275528	ROLL N RYE CULVER CITY CA	13.78
16	01/14	6015070214459019	CARY PHOTO LAB CULVER CITY CA	23.59
17	01/16	7083000000000000	CIRCUIT CITY PURCHASE 395 COMPUTER MEDIA	5.51
17	01/16	6016118000100172	077 DVD SOFTWARE	
17	01/16	6016020000433553	EAST WIND 4 CULVER CITY CA	19.54
18	01/16	6017207599700305	SUBWAY SANDWICHES # LOS ANGELES CA	5.89
18	01/16	6017749054440174	BURGER KING # 9218 Q07 LOS ANGELES CA	2.48
19	01/16	6018138019801123	RITE AID STORE 5444 LOS ANGELES CA	3.91
19	01/16	6018138019801123	EL POLLO LOCO 3301 LOS ANGELES CA	7.65
19	01/19	6019882658290191	LA TIMES SUB*1378846016 800-528-4637 CA	107.03
19	01/19	6019018000632678	BUFFET CITY LOS ANGELES CA	14.60
19	01/19	6019690192391106	SMART & FINAL CO. WEST LOS ANGELES CA	17.21
19	01/19	6020147724010040	DOMINO'S PIZZA #08306 LOS ANGELES CA	27.71
19	01/20	602302326891108	SAT PROS 626-599-2222 CA	420.00
19	01/24	6025007403499443	5 DE MAYO TACOS CULVER CITY CA	6.77
19	01/25	7575300000000000	CIRCUIT CITY PURCHASE 395 COMPUTER MEDIA	1.62
19	01/25	2130800000000000	CIRCUIT CITY PURCHASE 142 DIGITAL VIDEO	82.24
19	01/25	6025000139810579	HHF*ONECAL ELECTRONICS 800-340-4770 WA	284.02
19	01/25	6026710009432154	DENNY'S INC CULVER CITY CA	7.48
19	01/25	6026360143699167	OFFICE DEPOT #951 CULVER CITY CA	34.64
19	01/25	6026701066620484	HUS SZECHWAN 310-8370252 CA	30.90
19	01/27	6028130283159465	NEW PANDA BUFFET LOS ANGELES CA	20.53

EXPLANATION OF CODES ON REVERSE
TABLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
DEVIATIONS: "py" = Payment, "cr" = Credit

MAIL BILLING AND OTHER INQUIRIES TO:
CHASE CARDMEMBER SERVICE
PO BOX 100045
KENNESAW, GA 30156-9245
See form on reverse side.

ing of Payments: For payments by regular U.S. mail, send at least your minimum payment our post office box designated for payments shown on this statement. Your payments by post comply with the instructions on this statement, and must be made by check or money payable in U.S. Dollars, and drawn on or payable through a U.S. financial institution or the branch of a foreign financial institution. Do not send cash. Write your account number on the back of the check or money order. Payments must be accompanied by the payment coupon in the envelope provided with our address visible through the envelope window; the envelope cannot contain more than one payment or coupon, and there can be no staples, paper clips, tape or evidence included with your payment. If your payment is in accordance with our payment instructions and is made available to us on any day except December 25 by 1:00 p.m. local time at its office box designated for payments on this statement, we will credit the payment to your account as of that day. If your payment is in accordance with our payment instructions, but is available to us after 1:00 p.m. local time at our post office box designated for payments on statement, we will credit it to your account as of the next day. If you do not follow our payment instructions or if your payment is not sent by regular U.S. mail to our post office box designated for payments, crediting of your payment may be delayed for up to 5 days. Payments made electronically through our automated telephone service, Customer Service advisors, or our website will be subject to any processing times disclosed for those payments.

nt Information Reported to Credit Bureaus: We may report information about your account to credit bureaus. Late payments; missed payments or other defaults on your account may be reported in your credit report. If you think we have reported inaccurate information to a credit bureau, you may write to us at the Cardmember Service address listed on your billing statement.

ditional Payments: Any payment check or other form of payment that you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Cardmember Services, Box 100045, Kennesaw, GA 30156. We reserve all our rights regarding these payments (e.g., if it is determined there is no valid dispute or if any such check is received at any other address, we accept the check and you will still owe any remaining balance). We may refuse to accept such payment by returning it to you, not cashing it or destroying it. All other payments that we should be sent to the appropriate payment address.

ation of Finance Charges: The balance calculation method for purchases is the Two-Monthly Daily Balance (including new purchases). If your annual percentage rate (APR) is variable, the index and margin used to determine that rate and its corresponding APR are set forth in your Cardmember Agreement, as amended. Finance charges for each billing cycle are computed for transactions in the following manner:

compute a portion of your finance charge by multiplying a daily periodic rate by a daily balance for each day in the billing cycle for each balance type. We calculate periodic finance charges separately for each balance associated with a different balance type. These calculations for each balance type may include different transactions with the same daily periodic rates. The balance types are the average daily balance of:

- Balance Type A - Purchases (including new purchases) are your regular purchases to which Interest Free Special Purchase and Special Purchase promotional terms do not apply or are terminated, and also includes all unpaid debt cancellation charges, expedited payment and any other charges except cash advances and finance charges on cash advances.
- Balance Type B - Previous Cycle Purchases (including previous cycle new purchases) are your regular purchases for the previous billing cycle using the same kinds of purchases and charges as are used in computing Balance Type A for the current billing cycle.
- Balance Type C - Cash Advances (including new cash advances) are your regular cash advances to which Reduced Rate Cash Advance promotional terms do not apply and finance charges on regular cash advances.
- Balance Type D - Interest Free Special Purchases (including new Interest Free Special Purchases) are special promotional purchase balances and Balance Type E - Interest Free Cash Advances (including new Interest Free Cash Advances) are special promotional cash advance balances. Finance charges accruing on these balance types are not added to your account balance, but instead they are accumulated from billing cycle to billing cycle and added to your account as Accumulated Finance Charges only if the Interest Free Special Purchase or Interest Free Cash Advance has not been paid in full by the end of the time period of the promotional offer. Accumulated Finance Charges also may be added to your account balance and the Interest Free promotion will terminate if the default rate takes effect on your account balances because you default under your Agreement. Until accumulated finance charges are posted to your account, we refer to these amounts as "Accumulated Finance Charges." For each billing cycle during which Accumulated Finance Charges are posted to your account, your statement will also disclose the average daily balance of such purchases or advances for that billing cycle.
- Balance Type F - Special Purchases (including new Special Purchases) are special promotional purchase balances to which special promotional terms (other than Interest Free described above) apply until the expiration of any time period specified in the promotional offer. A Special Purchase promotion also will terminate if the default rate takes effect on your account balances because you default under your Agreement.
- Balance Type G - Reduced Rate Cash Advances (including new Reduced Rate Cash Advances) are special promotional cash advance balances to which a special reduced daily periodic rate applies.

etermine the daily balance for each balance type we (i) take the beginning balance of transactions of that type in your account each day (including any unpaid finance charges, fees or charges applicable to that balance type), and (ii) add any new transactions of that kind and add any new fees or other charges of the kinds referred to in (i) above, and (iii) subtract the applicable portion of any payments and credits applied to your account as of that day (for Balance Types D, E and F) subtract the unpaid balance of any purchases or cash advances for which the Interest Free Special Purchase feature, Interest Free Cash Advances or Interest Free Purchase feature, as applicable, terminated as of that day.

ctions, balance transfer/convenience check fees and cash advance fees are added to the balance as of the date of the transaction or a later date of our choice. Other charges of the kind referred to in (i) above are added as of the date the charge is posted to your account. Accumulated Finance Charges on any Interest Free Special Purchases are added to Balance Type A, and Accumulated Finance Charges on any Interest Free Special Cash Advances are

In Case of Errors or Questions About Your Bill: If you think your bill is wrong or if you need more information about a transaction on your bill, write us using a copy of the form below or on a separate sheet at P.O. Box 100045 Kennesaw, GA 30156-9245 as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay the amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we are investigating your question, we cannot report you as delinquent on the disputed amount or take any action to collect the amount you question. If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, your letter or call (using the Cardmember Service address or telephone number shown on this statement) must reach us at least three business days before the automatic payment is scheduled to occur.

Special Rule for Credit Card Purchases: If you have a problem with the quality of goods or services that you purchased with a credit card (excluding purchases made with a check), and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

added to Balance Type C, as of the first day of the next billing cycle following the day on which the Interest Free feature expires if the Interest Free Special Purchases or Cash Advances have not been paid in full by that date, or as of the first day of the billing cycle that includes the day on which the Interest Free feature is terminated early because the default rate takes effect on all account balances. This gives us the daily balance for each balance type for each day in the billing cycle for each balance type. We add each day's daily periodic finance charge to the beginning daily balance for the next day.

There is a minimum finance charge of \$1 on purchases (with regard to balance types A and B) and a minimum finance charge of \$1 on cash advances in any billing cycle in which you owe periodic finance charges on these balance types. There is a transaction fee finance charge for each balance transfer, balance transfer/convenience check, or cash advance, in the amounts stated in your Cardmember Agreement, as amended. To get the total periodic finance charge for the billing cycle, we add all of the daily periodic finance charges for each day during that billing cycle for each balance type. Your total finance charge for the billing cycle is the sum of (1) any balance transfer/convenience check fee and cash advance transaction fees, (2) the periodic finance charges computed as described above on cash advance balances in balance types C, E and G, and (3) the periodic finance charges computed as described above on purchase balance types A, B, D, and F, except that the periodic finance charges on balance type D and E are accumulated from billing cycle to billing cycle and are only added to your account as Accumulated Finance Charges under the circumstances mentioned above.

For each balance type we calculate an average daily balance (including new transactions) for the billing cycle by adding all your daily balances and dividing that amount by the number of days in the billing cycle. If you multiply the average daily balance for a balance type by that balance type's daily periodic rate, and multiply the result by the number of days in the billing cycle, the total will equal the periodic finance charges for that balance type attributable to that billing cycle, except for minor variations due to rounding.

Grace Period: We accrue periodic finance charges on a transaction, fee, or finance charge from the date it is added to your daily balance until payment in full is received on your account. However, we do not charge periodic finance charges on new purchases billed during a billing cycle if we receive payment of your New Balance by the date and time your payment is due as shown on your billing statement and we received payment of your New Balance on your previous billing statement by the date and time your payment was due as shown on that billing statement. This exception or "grace period" of at least 20 days only applies to purchases, except it does not apply to Balance Type F - Special Purchases, balance transfers, balance transfer/convenience checks or any cash advances, including cash advance checks. A finance charge is computed on Balance Type B - Previous Cycle Purchases only if the New Balance shown on your billing statement for the previous billing cycle was not paid in full by the date and time shown on your previous billing statement and the Previous Balance shown on your billing statement for the previous billing cycle was zero, was a credit balance, or was paid in full during the previous billing cycle.

Annual Renewal Notice: If your account has an annual fee, it will be billed each year or in monthly installments, whether or not you use your account, and you agree to pay it when billed. The annual fee is non-refundable unless you notify us that you wish to close your account within 30 days of the date we mail your statement on which the annual fee is charged and at the same time, you pay your outstanding balance in full. Your payment of the annual fee does not affect our rights to close your account and to limit your right to make transactions on your account. If your account is closed by you or us, we will continue to charge the annual fee until you pay your outstanding balance in full and terminate your account relationship.

R4006-CCCB

EXHIBIT

C

41041400149340390000119000004497579

CHASE CARDMEMBER SERVICE
PO BOX 100044
KENNESAW, GA 30156-9244

ACCOUNT # 4104 1400 1493 4039
NEW BALANCE \$4,497.57
PAYMENT DUE DATE 04/07/06
MINIMUM PAYMENT DUE \$119.00



CHASE CARDMEMBER SERVICE
PO BOX 94010
PALATINE, IL 60094-4010

MAIL
CHECK
TO:

MAKE CHECKS PAYABLE TO CHASE



GARY J DAVIS
3126 ROBERTS AVE
CULVER CITY CA 90232-7415

M0114178

PLEASE INDICATE ANY CHANGE TO ADDRESS OR TELEPHONE BELOW OR VISIT WWW.CIRCUITCITYREWARDS.COM
Street Address _____ Home Telephone (____) _____
City-State-Zip _____ Business Telephone (____) _____ & Detach Here

CE SUMMARY

is Balance \$2,752.68
Payments and Credits \$2,752.68
Cash Advances \$0.00
Charges/Adjustments \$4,420.32
FINANCE CHARGES \$77.25
New Balance \$4,497.57

ACCOUNT INFORMATION

Statement Closing Date 03/13/06
Days in Billing Cycle 28
New Balance \$4,497.57
Credit Line \$6,000.00
Available Credit \$1,502.43
Available Cash Advance** \$1,502.43

ACCOUNT # 4104140014934039

Payment Due Date 04/07/06
MINIMUM PAYMENT DUE \$119.00

CALL 1-866-522-7587 TO MAKE YOUR
PAYMENT OVER THE PHONE OR
VISIT US ONLINE AT
WWW.CIRCUITCITYREWARDS.COM

PROMOTIONAL SUMMARY

Ending Date	Average Daily Balance	Deferred Average Daily Balance	Daily Periodic Rate***	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE	Accumulated Deferred Finance Charges	Promotional Payoff Balance	Promotional Ending Date
22 MOS NRWP		\$218.00	0.0657%	23.99%		\$3.99	\$263.09	01/14/2008

ACCOUNT BALANCE MAY CONTAIN PURCHASES THAT REQUIRE A MINIMUM MONTHLY PAYMENT BY THE DUE DATE ON THIS STATEMENT. PLEASE REFER TO THE MINIMUM PAYMENT DUE FOR THAT AMOUNT. ACCUMULATED DEFERRED FINANCE CHARGES WILL BE PAID IF YOUR PROMOTIONAL BALANCE(S) IS PAID IN FULL BY THE PROMOTIONAL END DATE SHOWN IN THE PROMOTIONAL SUMMARY SECTION. THE PROMOTIONAL END DATE MAY DIFFER FROM YOUR DUE DATE.

TRANSACTION DETAIL

Transaction Date	Reference Number	Transactions	Charges & Credits
		Purchases	
02/13	6044295110835675	BEST BUY 00003939 W HOLLYWOOD CA	1,765.96
02/12	6044690441473768	SMART & FINAL CO. WEST LOS ANGECA	17.21
02/12	6044980003861934	ASIAN KITCHEN CULVER CITY CA	9.71
02/13	6045207599700376	BURGER KING # 9218 Q07 LOS ANGELES CA	3.78
02/14	6046980002575183	QUIZNO'S VENICE & ROBERTSCULVER CITY CA	7.35
02/15	6047585315218229	PIZZA HUT 07055015 CULVER CITY CA	14.60
02/17	6048512022011264	NORM'S LA CIENEGA #50 LOS ANGELES CA	13.89
02/18	6050049000289276	SUPER STAR BUFFET RESTAURCULVER CITY CA	16.75
02/18	6050381831192627	RALPHS #0284 SF4 CULVER CITY CA	12.75
02/20	6051295111972634	BEST BUY 00003939 W HOLLYWOOD CA	8.65
02/21	4889500000000000	CIRCUIT CITY CREDIT PURCHASE 142 DIGITAL VIDEO	82.24cr

EXPLANATION OF CODES ON REVERSE
CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
NOTATIONS: "py" = Payment, "cr" = Credit
REFER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
CHASE CARDMEMBER SERVICE
PO BOX 100045
KENNESAW, GA 30156-9245
See form on reverse side.

Customer Name
 GARY J DAVIS

Account Number
 4104-1400-1493-4039

Page 2 of 3

Payment Tips

- ✓ Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- ✓ Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- ✓ Checks should be made payable to Chase.
- ✓ Write your account number on your check or money order.
- ✓ Include the payment coupon with your payment in the envelope provided.
- ✓ Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE
 PO BOX 100044
 KENNESAW, GA 30156-9244

Transaction Date	Reference Number	Transactions	Charges & Credits ♦
02/20	6052118000100573	WOK ON FIRE INC LOS ANGELES CA	26.17
02/20	6052383117291564	COMPUSA/GOOD GUYS #740 LOS ANGELES CA	151.54
02/20	6052207599700368	BURGER KING # 9218 Q07 LOS ANGELES CA	2.48
02/21	6053384323115341	KFC 2610052 26100529 CULVER CITY CA	4.85
02/21	4889899004897000	CIRCUIT CITY CREDIT PURCHASE	933.53cr
		121 30" AND LARGER TVs	
02/23	6054000594427855	TVX/PWR056*MAGAZNE P&H 877-813-0001 NY	2.00
02/23	6055470096300020	TASTE OF INDIA - C CULVER CITY CA	14.27
02/22	6055138011473500	EZ NEW WEB LAUNDROMAT CULVER CITY CA	5.45
02/23	6055690551481334	SMART & FINAL CO. WEST LOS ANGECA	42.10
02/24	6056286299800195	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	19.73
02/24	6056286299800476	PAPA JOHN'S PIZZA #2380 LOS ANGELES CA	2.00
02/26	6058101912692422	IHOP #782 LOS ANGELES CA	12.07
02/27	6058123365012788	GABY'S MEDITERRANEAN R LAS ANGELES CA	17.70
02/27	6059783000102064	JITB #0293 00002931 LOS ANGELES CA	2.15
02/27	6059701066620476	HUS SZECHWAN LOS ANGELES CA	22.64
02/27	6059207599700437	BURGER KING # 9218 Q07 LOS ANGELES CA	2.48
03/02	6061000257186393	XM *SATELLITE RADIO 800-XMRADIO DC	19.94
03/03	0211022004959000	CIRCUIT CITY PURCHASE	2,000.00
		126 PLASMA TV	
		127 MOUNTS	
03/07	6067197310661034	PANDA EXPRESS 00006189 CULVER CITY CA	6.92
03/07	6067396799783853	RALPHS #0086 SF4 CULVER CITY CA	29.43
03/07	6069442545100024	INDUSTRY CAFE AND CULVER CITY CA	9.75
03/09	6069293015400299	KRISTINA S ITALIAN LOS ANGELES CA	16.27
03/09	6069398348919784	AUTOZONE #5433 LOS ANGELES CA	4.32
03/10	6069398535629554	RALPHS #0086 SF4 CULVER CITY CA	3.85
03/10	6069200079900237	20/20 VIDEO #12 LOS ANGELES CA	12.99
03/10	6070295111993272	BEST BUY 00001792 CULVER CITY CA	39.06
03/10	6070295111993322	BEST BUY 00001792 CULVER CITY CA	40.55
03/10	6070116340010813	BAJA FRESH 10142 CULVER CITY CA	7.63
03/11	6071503106450066	BESTBUYCOM 88994009 888-BESTBUY MN	20.54
03/12	6072120726208791	NEW PANDA BUFFET LOS ANGELES CA	10.80
03/13		PURCHASE *FINANCE CHARGE*	77.25
		Payments/Credits	
03/04	6065001000000010	ONLINE PMT RCVD-THANK YOU	1,006.00py
03/06	6066001000000019	ONLINE PMT RCVD-THANK YOU	730.91py

IMPORTANT INFORMATION

NOTICE***
 ACCOUNT IS IN DISPUTE FOR \$396.43. THIS AMOUNT HAS NOT BEEN INCLUDED IN THE FINANCE CHARGE OR MINIMUM PAYMENT
 ACTIONS.

PLANATION OF CODES ON REVERSE
 BLE CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
 /ATIONS : "py" = Payment, "cr" = Credit
 FER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
 CHASE CARDMEMBER SERVICE
 PO BOX 100045
 KENNESAW, GA 30156-9245
 See form on reverse side.

VISA

031306 Statement

Customer Name
GARY J DAVIS

Account Number
4104-1400-1493-4039

Page 3 of 3

Payment Tips

- Call 1-866-522-7587 to make your payment over the phone! (A small fee will apply.)
- Mail your payment 7-10 days in advance of your payment due date to allow for mail delivery.
- Checks should be made payable to Chase.
- Write your account number on your check or money order.
- Include the payment coupon with your payment in the envelope provided.
- Written correspondence should be sent to:

CHASE CARDMEMBER SERVICE
PO BOX 100044
KENNESAW, GA 30156-9244

Use your Circuit City credit card and take advantage of special financing promotions available at your local Circuit City stores!

As a Valued Cardmember, you can claim high-quality merchandise from top brands such as Lenox, Harley-Davidson, Cross and many more! Just go to www.rewardcenter.com and enter 157511 where it asks for your certificate number. These products are not available to the general public, so act now!

Redeem your rewards points today and use your Rewards Certificates towards your next purchase at Circuit City. For every 500 points you earn, you'll receive a \$5 Rewards Certificate. Just visit circuitcityrewards.com anytime to check your point balance and redeem for Rewards Certificates.

REWARDS POINTS SUMMARY

Your Circuit City Rewards ID Number is 70021534100

The number of Rewards Points you have earned
(through 03/10/2006) 50,421

The total number of Rewards Points that are available
for you to redeem 1,790

The number of Rewards Points that are pending
in your account -2,369

FINANCE CHARGE SUMMARY

*	Average Daily Balance	Daily Periodic Rate***	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE	ANNUAL PERCENTAGE RATE	SEE REVERSE SIDE FOR IMPORTANT INFORMATION
Purchases A	\$4,232.35	0.0652%	23.79%	\$77.25	22.45%	
Purchases B	\$0.00	0.0652%	23.79%	\$0.00		
Cash Advances C	\$0.00	0.0761%	27.79%	\$0.00		

PERIODIC RATE MAY VARY FROM MONTH TO MONTH

EXPLANATION OF CODES ON REVERSE
CASH ADVANCE IS INCLUDED IN AVAILABLE CREDIT LIMIT
NOTATIONS: "py" = Payment, "cr" = Credit
hour automated information call 1-866-522-7587
er Service Advisors are available Monday - Friday 10am - 9pm ET
rt your credit card lost or stolen 24 hours a day call (888) 888-4142
.D. (Telephone Device for the Hearing Impaired), call (800) 925-1794
FER TO INTEREST FREE SPECIAL PURCHASES ON REVERSE.

MAIL BILLING AND OTHER INQUIRIES TO:
CHASE CARDMEMBER SERVICE
PO BOX 100045
KENNESAW, GA 30156-9245
See form on reverse side.

CHASE

245

PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES } ss.

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5820 Canoga Avenue, Suite 250, Woodland Hills, California 91367.

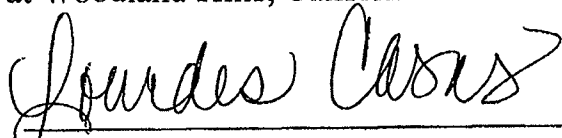
On **March 17, 2009**, I served the foregoing document described as **FIRST AMENDED CLASS ACTION COMPLAINT; DEMAND FOR JURY TRIAL** on the interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY U.S. MAIL:** As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Woodland Hills, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☒ **FEDERAL:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 17, 2009**, at Woodland Hills, California.


LOURDES CASAS

SERVICE LIST

1
2 Julia B. Strickland, Esq.
3 Stephen J. Newman, Esq.
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24 Telephone: 916-558-6182
25 Facsimile: 916-448-2434
26
27
28

EXHIBIT E

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

GARY DAVIS, an individual,) Case No. CV 06-04804 DDP (PJWx)
on behalf of himself, and as)
PRIVATE ATTORNEY GENERAL,) **ORDER DENYING IN SIGNIFICANT PART**
and on behalf of all others) **AND GRANTING IN PART DEFENDANT'S**
similarly situated,) **MOTION TO DISMISS**
Plaintiff,) [Motion filed on May 1, 2009]
v.)
CHASE BANK U.S.A., N.A., a)
Delaware corporation;)
CIRCUIT CITY STORES, INC., a)
Virginia corporation ,)
Defendants.)

Before the Court is Defendant Chase Bank U.S.A., N.A.'s Motion to Dismiss the First Amended Complaint. The First Amended Complaint, filed as a potential class action, seeks to bring four California state law causes of action against Chase,¹ all arising from Chase's servicing of a credit card Chase offered with Circuit City Stores Inc. The First Amended Complaint claims that Chase (1)

¹Because Circuit City is in bankruptcy, this case is actively proceeding only against Chase.

1 violated California's Consumer Legal Remedies Act, (2) violated
2 California Business and Professions Code § 17200, (3) breached its
3 contracts, and (4) breached the implied covenant of good faith and
4 fair dealing. Chase moves to dismiss the First, Second, and Fourth
5 Causes of Action on the basis that they are federally preempted
6 under the National Bank Act. Alternatively, Chase moves to dismiss
7 all four causes of action on the basis that they fail to state a
8 claim upon which relief can be granted. Additionally, Chase argues
9 that the First and Second Causes of Action must be dismissed for
10 failure to plead those claims with specificity pursuant to Federal
11 Rule of Civil Procedure 9(b). After reviewing the materials
12 submitted by the parties, hearing oral argument, and considering
13 the issues raised in both, the Court denies the motion in
14 significant part and grants the motion in part for the reasons
15 discussed below.

16 **I. BACKGROUND**

17 **A. Circuit City Rewards Card and Program**

18 Defendant Chase is a national bank incorporated in Delaware.
19 First Amended Compl. ("FAC") ¶ 4. Chase and Circuit City offered a
20 credit card called the "Circuit City Rewards Card," which conferred
21 certain benefits on consumers who utilized the credit card to make
22 their purchases. Id. at ¶ 5. Those benefits included earning
23 reward points redeemable at Circuit City stores and access to
24 Chase's advertised promotions of "no interest, no payment" or "no
25 interest, with minimum payments" for a specified period of time on
26 certain types of Circuit City purchases. Id. The FAC alleges that
27 Chase solicited Plaintiff and others similarly situated to make
28 purchases at Circuit City using the Circuit City Rewards Card. Id.

1 ¶ 18. In exchange for using its services, Plaintiff was eligible
2 to receive an interest- and payment-free period in which to pay off
3 the balance on certain "Promotional Purchases." Id.

4 Plaintiff alleges that Chase offers a misleading promotional
5 program with the card. Defendants from time to time advertised the
6 ability to make Promotional Purchases. Id. at ¶ 19. For example,
7 a Circuit City Rewards Card promotional item offered to customers
8 in 2006 states in large writing: "No interest! No payments! For six
9 months when you spend \$499 or more. For 90 days when you spend \$299
10 or more."; and "It is easy to take advantage of this offer! When
11 you make a purchase with your Circuit City credit card, present
12 this certificate to the store associate to scan." Id. According
13 to the FAC, the promotional offer conveys that the consumer will
14 receive the benefit of a grace period of anywhere from a few months
15 to two years or more. Id. at ¶ 28. In fact, however, all payments
16 made by the consumer on his or her regular monthly statement are
17 given priority of payment to the promotional item, even if not yet
18 billed and even if not due for many months. Id. at ¶ 27. That is,
19 Plaintiff alleges that Chase prioritized the allocation of credit
20 card payments to purchases not yet due and owing - the Promotional
21 Purchases subject to a grace period - rather than to purchases that
22 were accruing interest. Id. at ¶ 28. According to the FAC, Chase
23 fails to disclose that it allocates payments in this way. Id. at
24 ¶ 27. As a result, Plaintiff alleges, the promotional offer is a
25 scam used to induce customers into believing that they will have an
26 extended time period in which to pay off their Promotional
27 Purchases, when in fact the consumer has less time to pay off those

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1 purchases because of how Chase allocates consumers' payments. Id.
2 at ¶ 28.

3 On March 3, 2006, Plaintiff purchased a television set from
4 Circuit City, charging \$2,000 to his Chase Circuit City Rewards
5 Card. Id. at ¶ 21. Defendants treated the item as a Promotional
6 Purchase, with the term of no interest with minimal payment until
7 January 2008. Id. Prior to the purchase of the television, Chase
8 billed Plaintiff for purchases made between January 14, 2006 and
9 February 13, 2006 (the "February Statement"). Id. at ¶ 22. Based
10 on the language appearing in his monthly statements, Plaintiff
11 believed that he would not be assessed a finance charge if his
12 monthly billings were paid in full, or that any finance charge
13 would be based only on the remaining balance after any partial
14 payment had been subtracted from the outstanding balance. Id. at
15 ¶ 23 & Ex. B. Thus, if payment was due on the February Statement
16 by March 10, 2006 and payment was posted by March 10, 2006, no
17 finance charge should be applied because the balance would have
18 been paid in full. Id. at ¶ 22. Alternatively, if partial payment
19 was made either of the minimum or a greater amount, then a finance
20 charge should be applied only against the remaining balance after
21 subtracting the payment made. Id. Plaintiff returned two items
22 and made two on-line payments consisting of the total owing on
23 March 4, 2006 and March 6, 2006, thereby paying the February
24 Statement balance in full and on time. Id.

25 When Plaintiff received his statement for purchases made
26 between February 14, 2006 and March 13, 2006 ("March Statement"),
27 the statement showed that although Plaintiff had paid the February
28 Statement balance in full and in a timely manner, Chase assessed a

1 \$77.25 finance charge which appeared on the March Statement. Id.
2 at ¶ 24 & Ex. C. Plaintiff alleges that he was assessed the
3 finance charge because his entire February Statement Payment was
4 applied against the \$2,000 Promotional Purchase (payment for which
5 was not due and which had not yet appeared on his bill), instead of
6 the February Statement balance. Id. at ¶ 25. Plaintiff alleges
7 that the \$2,000 charge for the television was made subsequent to
8 the issuance of the February Statement, and no Payments of any kind
9 were due and owing for the Promotional Purchase until January 2008.
10 Id. Chase nevertheless allocated the entire \$1,736.91 that
11 Plaintiff paid on his February Statement to the March 3, 2006
12 Promotional Purchase. Id. Chase assessed similar charges in at
13 least two other situations. Id. at ¶ 26.

14 **B. Language of the Cardholder Agreements**

15 The terms and conditions of the Application to the Circuit
16 City Rewards Card state that, by signing and returning the form for
17 the credit card offer from Chase, an applicant agrees to numerous
18 terms.² Those terms include the following:

- 19 3. You authorize us to allocate your payments and credits in
20 a way that is most favorable to or convenient for us.
21 For example, you authorize us to apply your payments and
22 credits to balances with lower APRs (such as promotional
23 APRs) before balances with higher APRs.
24 4. Claims and disputes are subject to arbitration.
25 5. As described in the Cardmember Agreement, we reserve the
26 right to change the terms of your account (including the
27

28 ²The Application is attached as Exhibit A to the FAC.

1 APRs) at any time, for any reason, in addition to APR
2 increases that may occur for failure to comply with the
3 terms of your account.

4 FAC, Ex. A at 2. According to Plaintiff, although the quoted
5 language addresses lower and higher APR balances, it should not be
6 read to include "interest free" balances, with no APR being posted
7 to Plaintiff's monthly account balance. Opp'n at 6.

8 The various cardholder agreements describe Interest Free
9 Special Purchases as
10 special promotional purchase balances. . . . Finance charges
11 accruing on these balance types are not added to your Account
12 balance, but instead they are accumulated from billing cycle
13 to billing cycle and added to your account as Accumulated
14 Finance Charges only if the Interest Free Special Purchase . .
15 . has not been paid in full by the end of the time period
16 specified in the promotional offer. . . . Until accumulated
17 charges are posted to your account, we refer to these amounts
18 as "Accumulated Deferred Finance Changes."

19 FAC, Ex. B at 2, col. 1. The Cardholder Agreements repeatedly
20 represented that no payment would be due, and no interest would be
21 charged, until after the end of the time period specified in the
22 promotional offer. See Falk Decl., Ex. B at 6, ¶ 9(a) & Ex. E at
23 10, ¶ 10(a). The Cardholder Agreement also states: "[Y]ou agree
24 that we will and you authorize us to allocate your payments and
25 credits in a way that is most favorable to or convenient for us.
26 For example, you authorize us, in our discretion, to apply your
27 payments and credits to balances with lower Annual Percentage Rates

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1 (such as promotional Annual Percentage Rates) before balances with
2 higher Annual Percentage Rates." Falk Decl., Ex. E at 10, ¶ 9.³

3 **C. Challenge to Initial Complaint**

4 After Plaintiff first filed his Complaint, Chase moved to
5 compel arbitration and enforce a class action waiver on the basis
6 of an arbitration clause contained in its cardmember agreement.
7 Id. at ¶ 31. An arbitration clause was not part of Plaintiff's
8 original cardmember agreement, but rather had been introduced
9 through a "bill stuffer" that was sent to Chase's cardmembers as
10 part of their monthly billing. Id. This Court denied Chase's
11 motion, finding the arbitration clause to be unconscionable under
12 California law. Id. at ¶ 32; Dkt. No. 42 (March 26, 2007). The
13 Ninth Circuit affirmed that decision. Id. at ¶ 33; Dkt. No. 80
14 (November 25, 2008).

15 **D. Alleged Violations of Law**

16 On behalf of himself and others similarly situated, Plaintiff
17 brings four causes of action. The First Cause of Action seeks to
18 allege a violation of the Consumers Legal Remedies Act, Cal. Civil
19 Code §§ 1770(a)(9), (14), and (19). Plaintiff alleges that
20 Defendants (a) advertised goods or services with the intent not to
21 sell them as advertised, (b) represented that the transaction
22 conferred or involved rights, remedies, or obligations that it did
23 not have or involve, and (c) inserted unconscionable provisions in
24

25 ³The Cardmember Agreements, on which both parties rely but
26 which are not attached to the FAC, are attached to Defendant's
27 Request for Judicial Notice and a larger copy is attached to the
28 Falk Declaration. As the FAC refers to the cardmember agreements
and no party questions the authenticity of these documents, they
are appropriate for consideration in this Motion to Dismiss. See
pp. 9-10, infra.

1 the Cardmember agreement. FAC ¶ 38. The Second Cause of Action
2 seeks to allege a violation of California's unfair competition law,
3 California Business & Professions Code § 17200 *et seq.* Plaintiff
4 alleges that Defendants' unfair, fraudulent, and deceptive
5 practices include: (1) advertising promotional items as interest-
6 and payment-free when purchased with a Chase Circuit City Rewards
7 Card when in fact interest and finance charges were frequently
8 applied; (2) charging a finance fee despite payment of monthly
9 balance; (3) applying monthly payments to promotional purchases not
10 yet billed or owing instead of to the balance as billed in the
11 monthly statement due; and (4) inserting an unconscionable
12 arbitration and class action waiver clause and "change of terms"
13 clause in the cardmember agreement. FAC ¶ 47.

14 The Third Cause of Action seeks to allege breach of contract.
15 Plaintiff alleges that Chase breached its contract by prioritizing
16 the allocation of credit card payments to purchases offered and
17 accepted as interest and payment free ahead of non-promotional
18 items appearing on the monthly statement, and by charging an
19 interest fee on balances that remained due to this allocation of
20 payments. *Id.* at ¶ 53. Finally, Plaintiff alleges that Chase
21 breached the implied covenant of good faith and fair dealing by (1)
22 promising purchasers of Circuit City Promotional Purchases they
23 would receive a payment-free period in which to pay off their
24 purchase when, in fact, Chase prioritized the allocation of
25 payments to Promotional Purchases, and (2) by promising purchasers
26 of Circuit City Promotional Purchases that they would receive an
27 interest-free period in which to pay off their purchase when, in
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